

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

CR No.847-P of 2009

Bahadar and 82 others
Versus
Collector Land Acquisition 13 Others

JUDGMENT
Date of hearing 02/03/2020

Present:

Mr. Muhammad Taif Khan, Advocate, for the petitioners
Mr. Rehmanullah, Advocate, for the respondents

MUHAMMAD NAEEM ANWAR, J: - This civil revision is directed against the judgment & decree of learned Additional District Judge-IV, Swabi, dated 22/3/2009, whereby the appeal filed by respondents was allowed, consequently, the suit filed by petitioners / plaintiffs was dismissed.

2. Petitioners filed a suit for declaration that they being the owners of property, as described particularly in the heading of plaint, situated in the estate of Galla of Tehsil & District Swabi, are entitled for its compensation to the extent of their shares as per the entries in Jamabandi for the year 1995-96, on the basis of the unit of Shamilat of Topi, which was acquired for construction of Ghazi Barotha Hydropower Project vide Award No 8 dated 08.6.1996. Respondents were legally

bound to prepare the Acquittance role to the extent of recorded owner in revenue papers. It was prayed that respondents be directed to prepare the Acquittance role in accordance with law and to pay the petitioners their due shares and respondents No.1 to 4 be restrained from making the payment of petitioners' due shares to anyone else. It was alleged that disputed property measuring 3157-Kanal is the Shamilat of village Galla of the family (Tall) Ghulam Muhammad Khan since the settlement of 1870 till now. They being owners in Shamilat are entitled for their legal shares as per the entry in column of ownership of the estate of "Galla" i-e (Shamilat deh hasbe hisas paimana dafter Topi)

3. Suit of the petitioners was opposed by the respondents No.1 to 4, 11 to 14 and rest of them were placed Ex-parte. On conclusion of trial, suit of the petitioners was decreed by the learned trial court on 22.5.2007. Respondents being not satisfied assailed the judgment & decree of the learned Trial Court before the appellate court, where the appeal of respondents was allowed and suit of the petitioners was dismissed vide judgment and decree dated 12.3.2009.

4. Arguments heard and with the valuable assistance of learned counsel, record gone through.

5. It appears from this written statement that the contesting respondents have not categorically denied the stance of petitioners regarding the entries of revenue papers, as they have not mentioned even a word in it, rather simply stated that they were not aware about the entries of revenue papers. However, it was admitted by them that till then no payment was made, rather the preparation of acquittance role was in progress and asserted that compensation shall be paid to recorded owners of revenue papers. Petitioners produced ADK as PW.1, who placed on record Misle-Hiqiat of the estate of "Galla" for the year 1895, Jamabandi for the year 1923/24 Misle-Heqiat of 1927/28, pedigree table of plaintiffs/petitioners for the years 1870, Misle- Haqiat for the year 1870, Jamabandies for the years 1906-07 & 1930-31, copies of inheritance mutations since 1870 till current Jamabandi, Goshwara of ownership of petitioners since 1870 till 1927-28, as Ex.P.w.1/15. He, in his examination in chief deposed that "the plaintiffs are the owners to the extent of 18 Sarsai 10 kori and the area of which comes to 3157-Kanals in the suit property. They have neither sold nor mortgaged their property which has been acquired by Gazi Barotha Project on the basis of Award No.8 dated 08.6.1996 and according to entitlement the plaintiffs are entitled to its compensation." In cross examination, it was recorded

that “the number khasra mentioned in the petitioners are related to the village mentioned in the petition are related to the village and it relates to the shamilat Tall Ghulam Muhammad Khan Khel. In the petition some number Khasra relates deh village “Galla”. Statement of Special Attorney of petitioners namely “Muhtaj Nabi” was recorded wherein he reiterated the facts of plaint and stated that the property in dispute relates to three tribes (kandies) i-e Kandi Kanazai, Kandi Alizai and Kandi Amazai, from whom the petitioners belongs to the family of Ghulam Muhammad Khan of kandi Kanazai. Statement of Tasleem Khan, Patwari of Ghazi Barotha Project was also recorded, who in his examination in chief deposed that though the property of the estate of “Galla” was acquired but the compensation of same was determined on the basis of the unit of the estate of Topi, where the petitioners were not recorded as owners, thus their names were not included in the "Acquittance role" (Qabazul wasul). Likewise, Patwari Halqa Galla appeared as PW.3, who placed on record Jamabandi for the year 1999-2000 as Ex.P.w.3/2 wherein, the plaintiffs/petitioners are recorded owners. He also placed on file Goshwar-e-Milkiat (ownership) of petitioners as Ex.P.w.3/4 and Ex.P.w.3/5.

6. Conversely, respondents produced Patwari of Land Acquisition who placed on record, Award and

contended that Acquittance role/compensation role was prepared on the basis of the entries of “Topi”, thus, the names of petitioners were not included in it.

7. As both the courts were at variance thus the entire evidence was scanned for proper determination of the respective rights of the parties, because the issues which relates to the payment of compensation of acquired shares of Shamilat, which, as per the entries of column of ownership were to be settled conclusively on the basis of unit of the estate of "Topi", which at the time of settlement was mentioned in respect of Shamilat of Galla" (Shamilat deh hasbe hisas paimana dafter Topi).

8. One aspect of the issue in the unit of shamilat on the basis of which the proprietary body lay their claim to their entitlement. This shall be discussed within the concept of shamilat deh, which for its peculiar feature in this part of sub-continent has historical as well as socio-cultural background, that in particular area around the cultivated land owned by the original founding families of that area or village, there could be **huge tracts** of waste land collectively owned by those founding families, over which they have uninterrupted right, such piece of land was called by them as shamilat (common land) and the original founding families were

known as "Aala Malik" and those who had reclaimed the land with their consent were called "Adna Malik".

9. Apart from Shamilat, a unit of agriculture land independently owned is called "Holding" (khewat) and the owner of the land would be called Khewatdar. A single person may be the owner of holding (khewat) or it may be owned by more than one but the owner or owners of any particular holding have exclusive right to it. But in the in the case of Shamilat properties, the Khewatdars would enjoy collective rights of various numbers. These rights find mention in Wajib-ul-Arz. where various customs and usages of village are recorded. In particular, the rights relate to Shamilat deh are determined on the basis of Wajib-ul-Arz. Shamilat is the land owned by Khewatdar collectively and not exclusively. The entitlement of each original owner to the shamilat is determined on the basis of revenue being paid by Khewatdar and usually found mentioned in revenue papers as "Hasab-e-rasad Khewat".

10. The unit of shamilat is also depend on the customs and usages of founding families of particular area, especially in KPK, there are different units of Shamilat as Jori , Muthi , Paisa , Anna , Bakhra, Seir etc. to regulate the rights of family or individual. In the case in hand, at the time of settlement, it was particularized that in the matter of Shamilat of the estate

of "Galla", the unit of the estate "Topi" in proportionate shall be considered as the unit of "Galla". The mode and manner in which the shares of Sharmilat of "Topi" are settled shall be the yardstick for the shamilat of "Galla".

11. Perusal of Record reveals that the learned appellate court while deciding the appeal has considered three points for resolution of controversy;

- i. Whether civil court has got jurisdiction to entertain the present suit?*
- ii. Whether the plaintiffs are owners in Shamilat Tall Ghulam Muhammad Khan Khel Topi?*
- iii. Whether the plaintiffs are entitled to the Compensation of the shares?*

The learned appellate court, while considering the dictum as laid down by this Court in case titled "Said Umer Shah.vs.. Hasham and others reported in PLD 1978 page-3, concluded that civil court has got the jurisdiction to decide the matter. Respondents neither challenged the findings of the appellate court nor filed cross-objection in this civil revision, thus this point is not in controversy before this court. Nonetheless, the learned appellate court has travelled beyond the controversy because the point number (ii) has wrongly taken into consideration as it was not the dispute. In the trial court, from the divergent pleading pleadings, issue No.6 was framed as such;

***(6) Whether the plaintiffs are the owners in
Shamilat Tall Ghulam Muhammad Khan Khel
Mouza Galla?***

This was the point in issue. Award No 8 dated 08.6.1996 was got exhibited by the respondents and they relied upon it which manifested the situation, where it was explicitly mentioned that the property of the estate of Galla" Tehsil and District Swabi was chosen for acquisition. Later on, the entire property in dispute of the estate of Galla measuring 1357- Kanal and 16-Marla was acquired. Scanning of evidence as per discussion of Para No.4 of the judgment clearly demonstrate that the petitioners are the owners of the Estate of Galla which was acquired. Lengthy statement of ADK strengthened the version of the petitioners, when the record was documented since 1870 till current Jamabandi, Viewing from another angle when the unbroken record was surfaced and witness was cross-examined, nothing regarding the ownership of petitioners either of their exclusive owned property or of Shamilate of Galla was gleaned, which tantamounts to an admission of respondents that the petitioners were the owners of shamilat of Galla, which was acquired by respondents.

12. Of course, the findings of learned appellate court was based upon the narration of respondents in their memorandum of appeal, while taking three points for determination, where they alleged in Para - 8 of the

appeal that acquired property is shamilat-e-Deh of Topi (estate). The respondents from day first when notification under section 4 of Land Acquisition Act, 1894 was issued in the year 1994, till now not sure that what was the nature of suit properly, from whom they have acquiring it, to whom the compensation was to be paid, what would be the mode for preparation of Acquittance Role and how the column of ownership of Shamilat of Galla would be interpreted. This confusion in their mind has continued this controversy spreading over two and half decades.

13. The use of term (Shamilat deh hasbe hisas paimana dafter Topi) in column of ownership of the shamilat of the estate of "Galla" was only to the extent that, whenever there would be a dispute for the shares of Shamilat of Galla, the same would be resolved as per the unit of the estate of Topi. Apart from that no other meaning could be given to the said entry. By no stretch of imagination, it could be said that disputed property is of the estate of Topi and petitioners being not recorded owners, thus were not included in the Acquittance role. Both the estates "Topi and "Galla" have their separate entity and are not part and parcel of each other. The petitioners are recorded owners of the estate of "Galla" and their shares from the shamilat were acquired, thus, they are entitled for the compensation of it. The term

Shamilat and Shamilat Deh are universally used in Pakistan to denote the village Commm land. The best translation of Shamilat in English language would be "Common Land" or the "Community Land" so, the owner of Topi, who are not the owners of the estate of Galla being original owner (Aalla Malik) could not be paid compensation of the acquired land. Similarly, all the owners in the village Galla are also joint owners of Shamilat of it and their shares shall be proportionate to the size of their holding vis-a-vis total land in the village excluding malikan-e-qabza. It was the absolute right of the petitioners to claim compensation as there can be no cavil with proposition that no acquisition without compensation. The apex court in case titled "Land Acquisition Collector and others. Mst. Iqbal Begum, reported as PLD2010 SC 719 has enunciated the principle that "the main object of land acquisition Act, 1894, is to provide complete indemnity to the owners and no property has to be acquired without proper and adequate compensation. In case titled "Jahangir Saddique Khan. vs. Secretary Ministry of Defense and two others reported as **2017 YLR 1909** Lahore High Court has held that;

"Under article 23 of the Islamic Republic of Pakistan, 1973, every citizen has a right to acquire, hold and dispose of property in any part of Pakistan. No doubt the state can

acquire the land under article 24 of the Constitution, but the idea of taking forcible possession of the land and that too without making any compensation is alien to the land acquisition laws"

Likewise, in case of "Qazalbash Waqif..vs..Chief Land Commission, Punjab and others" reported as PLD 1990 SC 99 one of the settled principle was;

"If the state wants to acquire property of a citizen by force, it has to compensate owner for that and such compensation should be equal to market value of property"

14. One of the arguments of respondents was incompetency of suit as per the payment through Acquittance role, suffice is to say that after the institution of suit, when respondent appeared and submitted written statement they have categorically taken the stance that preparation of Acquittance role is in progress and the amount of compensation shall be paid to the recorded owners of the revenue papers. Similarly, Ex. D.w.1/2 (Award No.8) wherein at serial No.7 of **apportionment** it was mentioned that;

"the remainder of compensation will be distributed amongst the other co-sharer according to their shares in Shamilat Deh or kandi (Tall). Besides the above, any document operative in law or decision of court shall be followed at the time of payment and setting in the Award.

The claim of the petitioners is very simple thing that they are entitled for compensation of their shares in acquired property and they have claimed nothing against others; therefore, no one would be adversely affected as the compensation would be paid by the respondents to them and non-inclusion of their names in acquittance role is against the fact and law as well. If an amount of compensation was paid to any person who was not legally entitled for the same, then it would be for the respondents to adopt the proper course, but, in such circumstances, the petitioners' / land owners would not be held responsible, therefore, respondents are bound to pay compensation of the acquired property to the petitioners as per their entitlement.

15. For all that discussed above, this petition is allowed, judgment & decree of the learned appellate court is set aside and that of learned trial court is restored, leaving the parties to bear their own cost.

Announced:
02/03/2020

JUDGE

(Nazir)