

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

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

Civil Appeal No. 03/2016

In

CPLA No. 42/2015

Collector/Settlement Officer & others

Petitioners.

Versus

Syed Muhammad Hussain & others

Respondents.

PRESENT:-

1. The Advocate General Gilgit-Baltistan alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioners.
2. Mr. Johar Ali Khan Advocate for respondents.

DATE OF HEARING: - 26.06.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has arisen out of the impugned judgment dated 19.02.2015 in Civil First Appeal No. 08/2011 passed by the learned Chief Court whereby the said Civil First Appeal filed by the petitioners was dismissed being devoid of merit, hence, this petition for leave to appeal. This court vide order dated 08.03.2016 granted leave to appeal and notices were issued to the respondents accordingly.

2. Briefly, the facts of the case are that the Petitioner No. 02 i.e. Education Department Gilgit-Baltistan initiated a project of construction of F.G Boys High School Jalalabad as per prevailing policy that the inhabitants were required to provide land free of cost for the said project. The inhabitants of the village handed over a

piece of land through a registered agreement during the year 1979. The people of the area were also collected donations in shape of rupees to compensate the people who have donated their land free of cost for the Education Department Gilgit-Baltistan. During the riots of 1988, the said donated/collected amount was burnt alongwith other articles of the School. Later on, it was decided to compensate the land owners through acquisition of land under The Land Acquisition Act 1894. In this regard an award was passed which was challenged by the respondents. The respondent No. 01 namely Syed Muhammad Hussain s/o Syed Amin Shah filed a Reference No. 151/1997 under Section 18 of The Land Acquisition Act, 1894 in the learned District/Referee Judge Gilgit which upon hearing was allowed vide judgment dated 24.05.2011. Being aggrieved by and dissatisfied with, both the parties assailed the said judgment before the learned Chief Court. Upon hearing, the learned Chief Court refused the appeal of the respondents with the observation that the learned Referee Court has rightly appreciated the value of acquired land of petitioners by enhancing the rate compensation from Rs. 60,000/- to Rs. 120,000/- per Kanal whereas the appeal of the petitioners was partially accepted to the extent of 8% compound interest on the compensation amount determined by the learned Referee Court from the date of passing of award i.e. 28.06.1997 till payment of the award as provided under the provision of Section 34 of The Land Acquisition Act, 1894. The petitioners being aggrieved filed CPLA No. 35/2010 before this

Court praying therein that neither the learned Trial/Referee Court nor the learned Chief Court attended the question relating to the actual date of possession and payment of interest under Section 34 of The Land Acquisition Act, 1894. This Court vide judgment dated 22.03.2011 remanded the case back to the learned Referee Judge for determination of actual date of possession. The learned Referee Judge on the directions of this Court framed the additional issue. In support of the additional issue, the petitioners got recorded statements of two (02) PWs namely Murtaza Khan and Anwar Shah R/o Jalalabad. The respondents also produced two (02) RWs namely Daulat Mir and Mirbaz Ali. On the basis of above evidence, the learned Referee Judge proved the additional issue in favour of the respondents. The petitioner feeling aggrieved filed Civil First Appeal No. 08/2011 before the learned Chief Court which upon hearing was dismissed being devoid of merit, hence, this petition for leave to appeal.

3. The learned Advocate General submits that on the request of inhabitants i.e. notables and numberdars of the area, the disputed land was acquired free of cost by the petitioners for construction of High School. The said notables and representatives were responsible to compensate the land donors and accordingly they had collected fund to meet the cost of the acquired land. He also submits that they have collected accordingly and handed over the same to Head Master Middle School Jalalabad. In the year 1988, it was intimated that the donated/collected amount was

burnt during sectarian violation erupted in the area. Per learned Advocate General, the petitioners as a matter of courtesy/sympathy initiated a case for approval of reasonable amount to compensate the land donors. Accordingly an award was passed which was challenged and the respondents filed reference in the learned Referee Judge Gilgit, which upon hearing was allowed in favour of the respondents. He further submits that the order of the learned Referee Court/District Judge Gilgit is ambiguous as no date of actual possession was determined and the date of possession is based on assumption/presumption. He reiterates that the learned Chief Court has also failed to apply its judicial mind to determine the actual date of possession of the said land. He submits that the land acquired for construction of said School by the Provincial Government was a common barren land belonging to the Government, however, the said land was in possession of the respondents. The land in question was never acquired from the respondents and the compensation of the said has been enhanced to Rs. 120,000/- from Rs. 60,000/- due to misconception of law. He submits that the impugned judgment passed by the learned Chief Court is the result of misconception of law and misreading/non-reading of the facts of the case, hence, the same is not sustainable. He prays that the impugned judgment may graciously be set aside.

4. On the other hand, Mr. Johar Ali Khan Advocate appearing on behalf of the respondents supports that the impugned judgment dated 19.02.2015 in Civil First Appeal No. 08/2011

passed by the learned Chief Court. He contends that the suit land is in possession of the respondents which shows that they are the real owners of the land in question. Per learned counsel, the respondents have successfully proved their case through documentary as well as oral evidence. He submits that the learned Chief Court has rightly dismissed the Civil First Appeal filed by the petitioners. He submits that the impugned judgment passed by the learned Chief Court may pleased be maintained being well reasoned and well founded.

5. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through impugned judgment passed by the learned Chief Court. Admittedly, the respondents have successfully proved their case through documentary and oral evidence. In our considered view, a factual controversy was involved which was resolved after recording of evidence through additional issue on disputed land in the learned Referee Court. Further, the learned Advocate General also could not point out any infirmity or illegality in the impugned judgment. The impugned judgment passed by the learned Chief Court is well reasoned and well founded, hence, interference into it is not warranted by this court.

6. In view of the above discussions, we dismiss this appeal. Consequently, the impugned judgment dated 19.02.2015 in Civil First Appeal No. 08/2011 passed by the learned Chief Court is affirmed.

7. The appeal is dismissed in above terms.

Chief Judge.

Judge.