

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
C.P.L.A. NO. 37/2009.

Before:- Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.
Mr. Justice Muhammad Yaqoob, Judge.

1.Niamat Khan through his legal representatives (i) Abdul Majeed Khan (ii) Ahmed Khan, his sons .2. Muhammad Afzal Khan .3. Muhammad Shafi, sons of Inayat Khan .4. Hassan Shah .5. Fida Ali .6. Muhammad Ayoub sons of Muhammad Shah .7. Dadu Khan son of Mujawar .8. Sultanullah Baig son of Hasil Khan .9. Qurban Shah son of Dadu .10. Ali Jauhar son of Bahadur .11. Sangi Khan through his legal representative Mehboob Ali .12. Sakhi Ahmed Jan .13. Bulbul Jan sons of Kabul Hayat 14. Wafi Ahmed son of Ahmad Ali .15. Mst Bibi Nani widow of Kabul Hayat 16. Adil son of Baz Gul 17. Jamil through his legal representative Behram Shah, his son 18. Laiman through his legal representative Behram Shah his sons. .19. Baran Shah through his legal representative Jan Alam, his son .20. Mehboob son of Lalim .21. Ali Sifat through his legal representative Abdullllah Shah his son .22. Ghulam Murtaza through his legal representative .23.Amani through his legal representative (i) Fidaullah (ii) Sherullah Baig, his sons .24. Farmano through his legal representative Shah Behram his son residents of Mauza Hassanabad, Tehsil Aliabad, Hunza District Hunza Nagar.

Petitioners

Versus

1. Secretary Kashmir Affairs and Northern Areas Affairs Islamabad.
2. Chief Secretary/Revenue Commissioner, Gilgit/Baltistan.
3. Collector /Deputy Commissioner, Gilgit
4. Chief Engineer, NAPWD Gilgit.
5. Executive Engineer NAPWD (B&R) Division Hunza/ Nagar.

Respondents

APPLICATION FOR GRANT OF LEAVE TO APPEAL UNDER ARTICLE 60(13) OF GILGIT-BALTISTAN (EMPOWERMENT AND SELF GOVERNANCE) ORDER,2009 AGAINST THE ORDER DATED 27-05-2009 PASSED BY GILGIT-BALTISTAN CHIEF COURT IN C.F.A. 16/2008. WHEREBY THE CIVIL FIRST APPEAL OF DISTRICT COURT/EXECUTING COURT, GILGIT, HOLDING THAT GILGIT-BALTISTAN CHIEF COURT HAD CATAGORICALLY AWARDED INTEREST TO THE APPELLANTS PURPORTED BY SECTION 34 OF THE ACT AND NO INTEREST UNDER SECTION 28 OF THE LAND ACQUISITION ACT HAS BEEN GRANTED.

Present:- Mr. Muhammad Shafi, Sr. Advocate for the petitioners.
Advocate General Gilgit-Baltistan for the respondents.

Date of Hearing:- 25-10-2010.

ORDER

Mr. Justice Muhammad Yaqoob, J..... This petition for leave to appeal has been directed against the impugned order/judgment dated 27-05-2009, passed by the learned Division Bench of Chief Court Gilgit-Baltistan, whereby the learned Chief Court dismissed the Civil first Appeal and

up-held the findings of executing Court dated 05-07-2008, hence this petition. This apex Court admitted C.P.L.A No.37/2009 for regular hearing on 17-03-2010. We therefore deem it proper to reproduce the contents of the short order dated 17-03-2010, for clarification.

“Contends that there is no ambiguity in the original order on the basis of which decree has been passed by the Referee Court which has been maintained by the Chief Court with some modification and that in executing proceedings, the executing Court as well as Chief Court by misinterpreting the original order declined to grant the interest to the petitioners under section 28 of the Land Acquisition Act 1894 with observation that it was not as such part of the decree. The contention raised requires consideration and leave is accordingly granted with direction that main appeal shall be heard on the present record immediately after summer vacation. The parties may, if so require, place additional document on record.”

The brief facts forming background of this petition are that the land of petitioners was acquired for the construction of Hydle Project MP-4 vide award No.DK-16/Hunzah/116-17/91 dated 25-05-1991. Not content with the compensation amount, the petitioners approached the Collector for referring the matter to court Under Section 18 of the Land Acquisition Act (Act I of 1894) hereinafter called the Act, which was accordingly processed.

The claim of petitioners was resisted by respondents on variety of grounds through their written-statement. The divergent pleadings of the parties give birth to as many as (II) issues. After receiving respective

evidence of the parties the learned Referee judge was pleased to enhance the compensation amount through the order dated 10-09-1997.

The respondent preferred an appeal before the Chief Court Gilgit-Baltistan and the learned Chief Court passed a decree on 22-06-2000, modifying the decree of the learned Referee Court dated 10-09-1997.

That the petitioners had filed an application on 22-12-2001, for the execution of decree of the learned Referee Court and the Chief Court, Gilgit-Baltistan. The learned District Judge Gilgit, as executing court, held that the respondents have paid the decretal amount with profit in the light of **Section 34 of the Land Execution Act 1894**. The Executing Court further directed the respondents/judgment-debtors to deposit the amount Rs. 1,16,057/- (One Lac Sixteen thousand and fifty seven only) in the court without fail, the above direction on behalf of Executing Court, is without calculation of any interest **under Sections 28 & 34 of the Land Acquisition Act 1894**.

We have heard the argument advances by the learned counsel for the parties at length and also perused the relevant record as well as the impugned orders/judgments of the lower courts with full care and caution. The learned counsel for the petitioner vehemently argued and submits that the order of the Executing Court below as well as the impugned judgment is not a speaking order and the same was based on conjectures and surmises and not on law. The provisions of law as contained Under Sections 28 and 34 of Land Acquisition Act 1894, were mis-interpreted by the lower courts below, as such the findings of both the learned lower courts are liable to be set aside. He further strongly pressed that the Learned Executing Court below has not calculated the interest according to

law on the amount of compensation. Moreover, the Learned Executing Court has wrongly relied upon a calculation statement submitted by the respondents. The calculation showing by the respondent is based on arbitrary amount which can not be accepted to the petitioners by any means.

Learned counsel for the petitioners maintained that after once the compensation is increased by the court, the petitioners are entitled as a matter of right to the grant of compound interest at the rate of 8% **under Section 28 of the Land Acquisition Act**, which could not have been disallowed by the Learned Lower Courts. He further pointed out that both the learned lower courts are failed to exercise their jurisdiction in accordance with law, thus their findings are without jurisdiction and contrary to law and facts, as such not tenable. The learned counsel for the petitioners concluded with the last submission that the orders passed by the Learned Lower Courts may kindly be set aside to meet the ends of justice.

On the other hand the Learned Advocate General Gilgit-Baltistan strongly opposed the arguments advance by the learned counsel for the petitioners and submits that the Learned Chief Court, Gilgit-Baltistan had appointed a commission with consent of the parties for determination of proper rates of compensation. In the light of report of commissioner, the Learned Chief Court Gilgit-Baltistan passed decree in favour of petitioner on 22-06-2000. The Learned Chief Court has already extended the benefit of Section 34, Land Acquisition Act, as such both the Learned Lower Courts rightly refused to maintain the contention of petitioners. He further argued that the petitioners did not press this claim as the petitioners have been adequately compensated in as much as the price of the compensation for the land has been awarded to them, they have also been awarded

sufficient compensation regarding the trees. Therefore, the objection raised by the counsel for petitioner has no force at all, as such, it can not be considered in favour of petitioners. He further strongly pressed, that Under Section 28 of the Land Acquisition Act, the ground of compound interest is within the discretion of the court and no person or party can claim it as a matter of right. On this point the provision of Section 28 are sufficiently clear, as such the Learned Lower Courts below have rightly refused to entertain the application dated 22-12-2001, for the interest of 8% compound interest on the access amount.

We have minutely scrutinized the relevant record as well as the orders/judgments passed by the learned lower courts, with the able assistance of both the counsels for the parties. We have already stated in some detail the material fact of this case pertaining to the quantum of compensation as assessed by the Land Acquisition Collector and then as assessed by the Referee Court. We have also examine the memo of application submitted by the counsel for the petitioners, wherein it has been found that the amount assessed by Learned Acquisition collector with 15% compulsory charges as also interest in terms of Section 34 of Land Acquisition Act 1894 is not in dispute.

Now notwithstanding placement of the two sections i.e. 28 and 34 in the Scheme of Land Acquisition Act, 1894, Section 34 becomes invoke able at a point of time earlier then the one at which Section 28 is attracted. Section 34 mandates the Land Acquisition Collector to pay interest at the rate of 8% compound on such amount of compensation which has not been paid or deposited on or before taking possession of the land. This interest is payable from the date of taking of possession till the deposit of the amount. So far as matters governed by Section 34 of the said Act, is

concerned there is no dispute, at least one is not apparent on the face of record. Dispute has arisen in the matter of calculation of the interest payable to the petitioners Under Section 28 of the Land Acquisition Act 1894. We deem it proper to reproduce the said section here, as amended:-

“if the sum which, in the opinion of the court, the collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the court may direct that the Collector shall pay interest on such excess at the rate of 8% from the date on which he took possession of the land to the date of payment of such excess into the court”.

It will be seen that section 28 would come into play at a point of time when the Referee Court had made its award upon the matter being referred to it by the Land Acquisition Collector under Section 18 of the Land Acquisition Act, 1894. Further the interest would be payable only in case the court comes to the conclusion that the compensation payable to the land owners are in excess of the amount of compensation awarded to him by the land Acquisition Collector. Once the court comes to this conclusion, the Collector upon direction of the court has to pay the compound interest on the excess amount at the rate of 8%. **Upon plain reading of the said provisions of law, the compound interest payable there under is to be paid on the excess amount and this excess refers to the difference between the amount determined by the court and the amount assessed by the collector provided the amount determined by the court is in excess of the amount assessed by the land Acquisition Collector. Further this interest is to be paid retrospectively with effect from the date mentioned in the judgment passed by Referee Court dated 10-09-1997 and till such time that the excess amount is deposited in the Court.**

In the light of what has been stated above it can be concluded safely, that the impugned orders dated 27-05-2009 passed by the Learned Division Bench of Chief Court Gilgit-Baltistan and order dated 13-05-2008 of the executing court below is hereby set aside with the direction that the

petitioners are entitled for the compound interest under Sections 28 of the Land Acquisition Act, 1894. Further the **excess amount** in the shape of interest is to be paid retrospectively with effect from the judgment dated 10-09-1997. The executing court is further directed to calculate the interest on the **excess amount** of compensation and satisfied the decree according to law and equity.

This appeal in the above terms is allowed with no orders as to costs.

Sd/xxxx

Chief Judge

Sd/-xxxx

Judge