

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN AT
REGISTRY BRANCH SKARDU**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Raja Jalal-ud-Din, Judge.
CPLA No. 01/2011.**

1. The Collector Land Acquisition, District Skardu.
2. The Secretary Works, Gilgit-Baltistan Gilgit.
3. The Superintendent Engineer, PWD, Skardu.

PETITIONERS/APPELLANTS.

VERSUS

1. Muhammad Akbar Khan s/o Haji Ghulam Muhammad r/o Olding Skardu.

Respondent.

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN EMPOWERMENT & SELF GOVERNANCE ORDER 2009 READ WITH ORDER XIII OF GILGIT-BALTISTAN SUPREME APPELLATE COURT RULES 2008 AGAINST THE JUDGMENT/DECREE DATED 05/4/2011 PASSED BY THE LEARNED DIVISION BENCH OF CHIEF COURT GILGIT-BALTISTAN CAMP AT SKARDU, WHEREBY THE LEARNED CHIEF COURT PARTLY ACCEPTED THE APPEAL AND EXCLUDE THE RENT FOR SHOPS WHILE REST OF JUDGMENT/DECREE OF THE REFEREE COURT DATED 26/02/2010 UPHELD.

FOR SETTING ASIDE THE SAME TO THE EXTENT OF UPHOLDING OF REST OF JUDGMENT/DECREE OF REFEREE COURT DATED 26/02/2010, (ENHANCEMENT OF VALUE OF TWO SHOPS FROM RS. 5572/- TO RS. 500,000/- EACH SHOP ALONGWITH 15% COMPULSORY ACQUISITION CHARGE AND 8% COMPOUND INTEREST TILL REALIZATION OF THE AMOUNT BY DECLERING RESPONDENT AS OWNER OF EVACUE PROPERTY TO MEET THE ENDS OF JUSTICE.

Present:-

1. The Advocate General Gilgit-Baltistan on behalf of the petitioners.
2. Mr. Munir Ahmad, Advocate for the respondent.

DATE OF HEARING: - 01-10-2015.

DATE OF DETAIL JUDGMENT:- 02.11.2015.

JUDGMENT

Dr. Rana Muhammad Shamim, CJ.....This petition assailed the impugned Judgment in Civil First Appeal No. 01/2010 dated 05.04.2011 passed by the learned Chief Court, Gilgit-Baltistan. Whereby, the appeal of the petitioner was partially accepted while excluded the rent for the shops, whereas the rest of the order dated 26.02.2010 of Referee Court Skardu was upheld.

Briefly stated facts of the case are that the respondent (Muhammad Akber Khan) filed an application under Section 18 of the land Acquisition Act 1894 against the impugned award dated 28.6.1983, passed by the learned Collector Skardu. Which was referred to the Referee Court (District Judge) Skardu. The land of the respondents was acquired for extension of jeepable road to Truckable road in the year 1981. The value of shops was assessed by the Northern Areas Work Organization (NAWO). Accordingly, a sum of Rs. 11,145/- was fixed as compensation including 15% compulsory acquisition charges. Being aggrieved from the impugned award, the respondent /petitioner filed application under Section 18 of Land Acquisition Act 1894. The respondent prayed for the following relief in his petition under Section 18 of Land Acquisition Act 1894.

1. Value of shops may be enhanced up to Rs. 500,000/- per shop.
2. Rent @ Rs. 2500/- per month each shop with 15% compulsory acquisition charges.
3. 8% compound interest per year till the realization of the amount.

The learned trial Judge Skardu framed issues in the light of pleadings of the parties and after conclusion of the trial, he

accepted the petition by granting the relief as prayed vide his order dated 04.05.1994. The petitioner being aggrieved by and dissatisfied filed Civil 1st appeal No. 30 dated 19.9.2000. Upon hearing the learned Chief Court, Gilgit accepted the appeal and case was remanded back to Referee Court for fresh trial after impleading the Secretary works and Superintending Engineer as party in the reference petition. After impleading the respondents as party to the petition, parties lead additional evidence and the trial Court accepted the petition and granted decree as prayed for vide impugned order dated 8.7.2005. The appellants/Collector feeling aggrieved by and dissatisfied with impugned judgment/ order dated 8.7.2005, passed by the learned Referee Court Skardu the petitioners/ Appellants filed an appeal again before learned Chief Court, Gilgit-Baltistan, praying therein that the learned Referee Court Skardu has erred while not relying the assessment of the compensation of the acquired property carried out by the Government Organization i.e. Northern Areas Works Organization (NAWO), hence , the impugned Order having no legal force and secondly, he submitted that the rent of the acquired shops was illegally awarded by the trial Court to respondent as there is no provision in law for awarding such type of benefit with 15% compulsory charges and 8% compound interest.

Upon hearing the learned counsel for the respective parties the learned Chief Court Gilgit-Baltistan as mentioned earlier partially allowed the appeal while rest of the order of the learned Referee Court passed on 26.02.2010 was upheld. The learned Advocate General Gilgit-Baltistan submits on behalf of the

petitioner that the impugned Judgment dated 05.04.2011 passed by the learned Chief Court Gilgit-Baltistan as well as the order dated 26.02.2010 passed by the learned Referee Court Skardu are illegal and void passed against the Revenue record and material of the case file. He further contended that acquired property carried out by the Government Organization i.e. Northern Areas Works Organization (NAWO), hence, the impugned judgment /Order having no legal force and secondly, he submitted that the rent of the acquired shops was illegally awarded by the trial Court Skardu to respondent as there is no provision in law for awarding such type of benefit with 15% compulsory charges and 8% compound interest. He in support of his contentions relied upon the following case laws:-

01. SCMR 1967,191, case titled "Ghulam Muhammad versus Government of West Pakistan".
02. MLD 1994, 1340, case titled Muhammad Aslam versus Land Acquisition Collector, Lahore.
03. MLD 1993, 414 case titled Muhammad Afzal & others versus Government of Sindh through Chief Secretary & others.
04. PLD 1984, 35 case titled Gulzaman and others versus Collector land Acquisition, Peshawar.
05. PLD 1970, 321, case titled Col. Bashir Hussain & 10 others versus Land Acquisition Collector, Lahore.
06. PLD 1983,578, case titled Province of Punjab through Project Director versus Sher Muhammad & Another.
07. PLD 2002, 84, Hyderabad Development Authority through M.D. versus Abdul Majeed & others.

The learned Advocate General Gilgit-Baltistan lastly contended that the petitioners being necessary party have not been impleaded hence condemned unheard which is against the principle of natural justice. He also submits that under Section 18

of the Land Acquisition Act, 1894, the objections shall have been filed within six (06) months whereas in the instant case the objection were raised on 16.12.1992 and application against the objection has been filed after delay of nine (09) years. The value assessed by learned Referee Court on the basis of assumptions and no justification was offered. Further in support thereto no documents are available on record. The prevailing rates as appear in page 53 of the paper book at serial no 17 and 18 has not been rebutted by the respondent. The value assessed on mere assertion is not admissible as per parameter laid down by the superior Courts for assigning and determination of potential value of the Land in question. While saying so the learned Advocate General relied upon a case law reported in 1999 SCMR, Page 191, in respect of limitation in filing objection under Section 18 of the Land Acquisition Act, 1864.

On the other hand, the learned counsel for the respondent submits that the learned court has rightly framed additional issues after conclusion of the trial. The appeal of the respondent was rightly accepted by the learned Appellate Court as well as by the learned Chief Court Gilgit-Baltistan under Section 18, of Land Acquisition Act as prayed for. He finally prayed that the order/judgment of both the Courts below be maintained in the interest of justice and equity.

We have heard the learned counsel for the respective parties, perused the record and gone through both the judgments of the Courts below. The case laws relied upon by the learned

Advocate General Gilgit-Baltistan are applicable. Consequently this petition was converted into in appeal and allowed. The impugned judgment dated 05.04.2011 in CFA No. 01/2010 passed by the learned Chief Court Gilgit-Baltistan and the judgment dated 26.02.2010 in COS No. 04/2008 passed by the Additional District Judge/land Acquisition/Referee Judge Skardu are set aside being not tenable. Whereas the award No. DK. 01 (01)/82, dated 28.06.1983 passed by the learned Collector/ Deputy Commissioner Skardu is maintained. These were the reasons for our short order dated 01.10.2015.

The appeal is allowed.

Chief Judge.

Judge.

Whether the case is fit to be recorded or not?