

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

Before:-

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

C. Appeal No. 28/2016

In

CPLA No. 37/2013.

1. Sher Afraz son of Muhammad Masih resident of Muhallah
Kashrote Tehsil & District Gilgit. **Petitioner.**

Versus

1. Provincial Government through Chief Secretary Gilgit-
Baltistan & 06 others **Respondents.**

PRESENT:-

1. Mr. Amjad Hussain Advocate alongwith Mr. Rehmat Ali Advocate-on-Record for the petitioner.
2. The Advocate General for respondent No. 01 to 05.
3. Mr. Johar Ali Khan Advocate on behalf of the Civil Aviation Authority (CAA) Gilgit.

DATE OF HEARING: - 26.09.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has been directed against the impugned judgment/order dated 01.10.2013 in Writ Petition No. 12/2013 passed by the learned Gilgit-Baltistan Chief Court, whereby the Writ Petition of the petitioner was dismissed in limini being meritless by maintaining the order of the Collector. The petitioner being aggrieved by and dissatisfied with filed this petition for leave to appeal. This court vide order dated 10.05.2016 granted leave to appeal and the case was heard today.

2. The learned counsel for the petitioner submits that the Collector Gilgit has not included the name of the petitioner at the time of issuance of notices for award and payment of compensation. He also submits that at the time of preparation and payment of the award and compensation one Muhammad Yaqoob S/o Jan Muhammad, purportedly shown himself as owner of acquired land of the petitioner, whereas, the said Muhammad Yaqoob was not the owner of the said land. Subsequently, on knowing of such wrongfully paid award to the fraudster, the petitioner being real owner of land in question filed Reference before the learned Collector District Gilgit for issuance of award in his name. He also submits that the petitioner filed Civil Suit for declaration before the learned Civil Judge praying therein that the petitioner is the actual owner of the said property and submitted the documentary evidence thereto. He further submits that during the proceedings of the Reference said Muhammad Yaqoob S/o Jan Muhammad appeared and admitted that he has got the compensation wrongly against the property in question and he is ready to refund the amount of reward to the petitioner being real owner.

3. He also contended that the reference was decided on the basis of a compromise, and said Muhammad Yaqoob son of Jan Muhammad re-paid the award amount to the petitioner. Subsequently the petitioner filed a Reference before the Collector to properly compensate him according to the prevailing market rate as the acquired land was of more value than assessed. The said

reference was dismissed by the learned Collector on the ground of limitation, whereafter the petitioner filed Writ Petition No.12/2013, in the learned Chief Court Gilgit-Baltistan praying therein that he was not properly compensated as his land was of more value than assessed by the Collector and his Reference was a continuity of the litigations and no limitation runs against him. On the contrary the said petition was dismissed by the learned Gilgit-Baltistan Chief Court vide order dated 01.10.2013, which is a non-speaking order. He concludes that the impugned order is the result of misconception of law and misreading and non-reading of the facts of the case, hence, not tenable and liable to be set aside. While saying so he relied upon a case law reported as CLC 1984 Karachi 2353.

4. On the other hand, the learned Advocate General appearing on behalf Provincial Government and Mr. Johar Ali Khan learned advocate appearing on behalf of the Civil Aviation Authority support the impugned order dated 01.10.2013 in Writ Petition No. 12/2013 passed by the learned Gilgit-Baltistan Chief Court. They contend that the petitioner has been paid the compensation of his land acquired by the respondents. They also contend that initially due to an inadvertently the compensation was paid to an another person who also admitted that the said amount was wrongly paid to him. They further contend that the courts below have also extended the relief to the petitioner in accordance with law and no liability of the petitioner is left as he has received the due compensation

according to the prevailing rate of 2011. They finally contend that the impugned order dated 01.10.2013 in Writ Petition No. 12/2013 is required to be upheld being in accordance with law and no interference is warranted.

5. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned judgment dated 01.10.2013 in Writ Petition No. 12/2013 passed by the learned Gilgit-Baltistan Chief Court. The perusal of the case file transpires that the compensation was paid to one fraudster Muhammad Yaqoob son of Jan Muhammad instead of the petitioner who was the real owner of the property in question. The petitioner approached the respondents for issuance of award & compensation thereto within stipulated time. We are in agreement with the learned counsel for the petitioner and are inclined to remand the case back to the Collector District Gilgit who would refer the same before the learned Referee Court Gilgit to hear and decide the same on its own merits in accordance with law. The case law cited by the learned counsel for the petitioner is applicable.

6. In view of the above discussions, we allow this appeal. Consequently, the impugned order dated 01.10.2013 in Writ Petition 12/2013 passed by the learned Gilgit-Baltistan Chief Court as well as the order dated 10.04.2013 passed by the learned District Collector/Deputy Commissioner Gilgit are set aside. The case is remanded back to the learned Collector/Deputy

Commissioner Gilgit with the direction to refer the same to the learned Referee Court Gilgit to hear and decide the reference afresh on its own merits in accordance with law.

7. The appeal is allowed & case remanded in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?