

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

BEFORE:

Mr. Justice Syed Arshad Hussain Shah, Chief Judge
Mr. Justice Wazir Shakeel Ahmed, Judge

CPLA No.117/2019

(Against the judgment dated 03.10.2018 passed by the
learned Gilgit-Baltistan Chief Court in Writ Petition
No.271/2017)

1. Provincial Govt. through Chief Secretary Gilgit-Baltistan, Gilgit
2. Secretary Works Gilgit-Baltistan
3. Secretary Law Gilgit-Baltistan, Gilgit
4. Inspector General of Police, Gilgit-Baltistan
5. Executive Engineer B&R District Nagar
6. Collector/Deputy Commissioner Nagar
7. Assistant Collector/Assistant Commissioner,
8. Tehsil Chalt, District Nagar **Petitioners**

Versus

1. Asgar Ali, Yousaf Ali, Sajjad Ali
2. Mst. Zahara Khatoon all sons /daughter of Shaban Ali late Residents of Chalt Pain, Tehsil Chalt District Nagar **Respondents**

PRESENT:

For the Petitioner : Advocate General, Gilgit-Baltistan

Date of Hearing: **11.11.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:-This judgment shall dispose of the instant Civil Petition for Leave to Appeal directed against the judgment dated 03.10.2018 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No.

271/2017 whereby Writ Petition filed by the respondents was allowed.

2. Brief facts of the case are that a piece of land measuring 5 Kanals situated at Chalt Paine, Nagar was acquired by the Government of Gilgit-Baltistan for construction of SHO House Chalt Paine, Nagar. The respondents claimed in their writ petition before the learned Chief Court that authorities of the police department Nagar (the then SP Nagar) and district administration Nagar (the then DC) had approached father of the respondents for provision of said piece of land for the purpose of construction of SHO house and made him agree to provide the said land with the condition that government would pay compensation @ Rs. 1,200,000/-(rupees twelve lac) per kanal. The respondents further contended in their writ petition before the learned Chief Court that the DC/ Land Acquisition Collector, Nagar, after acquiring the land was reluctant to pay the amount of compensation by using delaying tactics. Consequently, the respondents resorted to legal remedy by way of a writ petition before the learned Gilgit-Baltistan Chief Court to get a writ issued against the petitioners for payment of an amount as the land compensation @ Rs. 1,200,000/- plus 8% compound interest per kanal as consideration for above stated land, which was accepted and the petitioners were directed accordingly, hence the instant Civil Petition for Leave to Appeal.

3. The learned Advocate General Gilgit-Baltistan contended that the scheme for construction of SHO house was approved before finalizing the revised land compensation rates, hence the respondents could not claim compensation as per the revised rates. The learned Advocate next argued

that the respondents failed to avail the first legal remedy provided under the Land Acquisition Act i.e. if the respondents had any objection/grievance with regard to fixation of compensation rates, they were required to get the matter referred to the Referee Judge for decision, hence the respondents could not claim land compensation as per revised rates by invoking writ jurisdiction of the learned Chief Court. He next contended that learned GB Chief Court also failed to apply its judicious mind to this legal aspect of the case and went on to pass the impugned judgment which was result of misconception and misinterpretation of provisions of the relevant law. The learned Advocate General Gilgit-Baltistan maintained that the writ petition before the learned Chief Court was not maintainable on the ground that before finalization of requirements under the provisions of the Land Acquisition Act, the respondents filed the writ petition before the learned Chief Court, hence the writ petition was liable to be dismissed being premature. On the basis of his submissions, the learned Advocate General Gilgit-Baltistan prayed for setting aside the impugned judgment passed by the learned Gilgit-Baltistan Chief Court.

4. We have heard the learned Advocate General, Gilgit-Baltistan. The record as well as the impugned Order has also been gone through minutely. We observe that admittedly a piece of land measuring 5 Kanals was acquired for construction of SHO House at Chalt Paine, Nagar. In this regard, the Deputy Commissioner/ Land Acquisition Collector Nagar issued Notification under Section 4 of the Land Acquisition Act, 1894 on 07.02.2017 which was followed by Section 5 of the ibid Act on 14.03.2017. In the Notice under Section 5 of the Land Acquisition Act, objections with regard

to fixation of land compensation rates by the DC/ Land Acquisition Collector, Nagar were called from the land owners and B&R Division Nagar. The rates in the Notice under Section 5 were fixed as Rs. 1,200,000/- (Rupees Twelve Lac) per Kanal alongwith 15% compulsory acquisition charges. From available record, it transpired that in sequel to acquisition process, the Halqa Patwari prepared compensation papers and submitted them to the office of DC/ Land Acquisition Collector through the office of concerned AC/ Assistant Land Acquisition Collector. On receipt of compensation papers, AC/ Assistant Land Acquisition Collector through a covering letter forwarded the same to Executive Engineer B&R Division Nagar for verification. The Executive Engineer B&R Nagar also carried out assessment of damages to structures attached to the acquired land and figured out a total compensation of structures etc. to the tune of Rs. 135500/-. We observed that after carrying out process of preparation of compensation papers, the DC/ Land Acquisition Collector Nagar did not go ahead with further process under the Land Acquisition Act which culminated in institution of writ petition before the learned Gilgit-Baltistan Chief Court. Creeping out the issue of halting further process under the Land Acquisition Act by the office of Land Acquisition Collector appeared to be with regard to application of land compensation rate. Probably, the Land Acquisition Collector was reluctant to apply the revised rate of land compensation which was Rs. 1,200,000/- per Kanal on the pretext that since the land was acquired before revision of compensation rates, the revised rates could not be applied.

5. It is made clear that it was the DC/ Land Acquisition Collector Nagar who himself had fixed the rate in the Notice under Section 5 of the Land Acquisition Act 1894 @ Rs. 1,200,000/- per Kanal and sought objections from the land owners/ B&R Division Nagar. Record does not speak that any objection with regard to fixation of land compensation rate as per revised rates was received from any quarter, as such, the rates so fixed stood final. Subsequent to finalization of rates by the DC/ Land Acquisition Nagar himself and thereafter demonstrating reluctance to proceed further in the matter on the ground either to apply old or new compensation rate is not sustainable. From perusal of record of case file, it is observed that upon recommendation of the DC/ Land Acquisition Collector Nagar vide his office letter No. Misc-26/1046/2015 dated 4th January, 2016, the Revenue Commissioner/ Chief Secretary, Gilgit-Baltistan revised rates of the land compensation according to which Rs. 1,200,000/- (Rupees Twelve Lac) per Kanal for agriculture land was fixed for Chalt, Nagar while Notices under Section 4 and 5 of the Land Acquisition Act were issued after recommendation of DC/ Land Acquisition Collector as to revision of the rates. It must be understood that a person cannot be deprived of from his property without sufficiently compensating him. This right is also protected as a fundamental right under Government of Gilgit-Baltistan Order, 2018 read with Article 24 of the Constitution of the Islamic Republic of Pakistan. Article 76 of Government of Gilgit-Baltistan Order, 2018 reads as under:

“76. Original Jurisdiction,--(1) *Without prejudice to the provisions of section 86, the Supreme Appellate Court, on an application of any aggrieved party, shall if it considers that a question of general public importance with*

reference to the enforcement of any of the fundamental right conferred by Chapter I of Part-II of this Order is involved, have the power to make declaratory order of the nature mentioned in the said section”

In observance of the above provisions of the Constitution of Islamic Republic of Pakistan and Government Gilgit-Baltistan Order, 2018, with a view to safeguard the rights/ interest of public and also to enable the government to acquire land for public/ government purposes, the legislatures have enacted the Land Acquisition Act. It would be appropriate to clarify that the Land Acquisition Act is a harsh confiscatory law which requires to be interpreted in favour of the person(s) affected and the superior Courts of Pakistan are very much clear about it and in a number of cases have held that such law/ enactments be interpreted so as to extend maximum benefits to the aggrieved. In this regard, we may rely upon a judgment of the Hon’ble Supreme Court of Pakistan titled Abdul Hafeez Abbasi and others versus Managing Director, Pakistan International Airlines Corporation, Karachi & others reported as 2002 SCMR 1034, wherein it has been held as under:

“It is also to be borne in mind that the Court/ Tribunal seized with the matter is competent to interpret the law liberally with the object to extend its benefits largely to the aggrieved persons”.

In addition to above, it would be appropriate to appreciate the object envisaged under the Land Acquisition Act. The Act aims at to provide the procedure for compulsory acquisition of privately owned land needed for public purposes and for companies, and to this end, the mode and manner of determination of the amount of compensation to be awarded

to the rightful owners of the Acquired Property has also been provided in the said Act which has further been interpreted in illustrative way by the superior Courts of Pakistan. The legislature in its wisdom has provided in the Act, an inbuilt mechanism for redressal of grievances of persons having rights and interests in the land being compulsorily acquired. First, we note that the formal declaration of the Provincial Government to acquire a particular land only takes place after the objections of interested persons, if any, are addressed by the competent authority. This protection afforded to the private landowners under the Act surely bolsters their fundamental right enshrined under Article 24 of the Constitution. In another case titled Sub. (Retd.) Muhammad Ashraf v. District Collector Jhelum and others (PLD 2002 SC 706) the Hon'ble Supreme Court of Pakistan has observed as under:

“and the only embargo which has been imposed under Article 24 of the Constitution is that no private property can be acquisition save in accordance with law and that too for a public purpose and on payment of compensation”.

In another case reported as MST. IQBAL BEGUM's case (PLD 2010 Supreme Court 719) it has been held as under:

“The principles laid down for determination of compensation reflect anxiety of law-giver to compensate those deprived of property adequately enough so as to be given gold for gold and not copper for gold... Various factors have to be taken into consideration i.e. the size and shape of the land, the locality and its situation, the tenure of property, the user, its potential value, and the rise or depression in the value of the land in the locality and even in its near vicinity”.

The word used “Adequately enough”, would certainly demand that since the owners of private land/ property might have sentimental/ emotional attachments to the property which is being acquired by the acquiring agency, therefore, they must be satisfied by redressing their genuine grievances. However, it must be ensured that in order to satisfy a land owner/ affectee/ person interested, the Land Acquisition Collectors may not go beyond the parameters provided in the Land Acquisition Act and the dictums of the superior Courts of Pakistan in similar matters to give an undue advantage to any party at the cost of public exchequer.

6. As far as the contention of the learned Advocate General, GB regarding assumption of wrong jurisdiction by the learned Gilgit-Baltistan Chief Court, it would not be out of context to clarify herein that after getting or acquiring the land, payment of compensation to the owners of the land is the obligation of the authority which has taken/acquired the land and the Constitution gives the payment of compensation to the owners of the land a status of fundamental right. It is the duty of the authority to pay the compensation before taking the possession or soon thereafter within a reasonable time. Being custodian of the Constitution, it is paramount duty of the Courts to enforce fundamental rights of citizens guaranteed by the Constitution. Therefore, in our view non-payment of compensation to the land owners is infringement of right of the land owners, as such, they rightly approached the learned Gilgit-Baltistan Chief Court for enforcement thereof. Writ jurisdiction of the learned Chief Court can be availed when no adequate remedy is available to aggrieved party in the present case, the Land Acquisition Collector stopped

further proceedings of acquisition and the respondents had no other forum except the writ jurisdiction. We note that land in question was acquired by the government through Land Acquisition Collector, Nagar, as such, the land owners cannot be denied to have the compensation received in lieu of their land. Reliance in this regard can be placed on a case reported as 2015 SCMR 1440 Mst. Nasreen Zahra Vs. Multan Development Authority. Relevant lines from the judgment are extracted and reproduced below:

“As regards the liability of Government of Punjab for payment of compensation for the land acquired for construction of Multan Bye-Pass, the very first Notification dated 7-5-1976 issued under section 4 of the Act shows that the land was acquired by Government of the Punjab for public purpose i.e. construction of Multan Bye-Pass. Through a Corrigendum Notification dated 18-3-1977, the land of Mst. Nasreen Zahra was included in the project i.e. construction of Multan Bye-Pass. The beneficiary of land in terms of the above Notification is Government of the Punjab and this fact alone is sufficient to establish its liability for payment of compensation for the land acquired”

We observe that the land was acquired for construction of SHO House, Chalt Paine, Nagar and its compensation papers were prepared by the revenue field staff of the concerned subdivision as per the revised rates i.e. 1,200,000/- per Kanal which was got verified by the Works Department Nagar, therefore, subsequent denial or using delaying tactics on the part of DC/ Land Acquisition is nothing but to unlawfully deprive the land owners from their property which is not permissible under the law besides violation of fundamental

rights of the land owners/ person interested. As far as the contention of the learned Advocate General, GB regarding submitting a reference before the Referee Judge is concerned, in our considered opinion, it would be done in a case where an award is announced by the Land Acquisition Collector and the parties have disagreement with regard to rate of compensation fixed in the award. There is no provision in law to refer a matter to the Referee Judge prior to the passing of award. In the present case, the Referee Court cannot be approached before passing of an award.

7. In view of the above factual and legal position, we have come to the conclusion that no illegality, infirmity or irregularity is found in the impugned judgment. Consequently, leave in the above CPLA No. 117/2019 is refused. Impugned judgment dated 03.10.2018 passed by the learned Gilgit-Baltistan Chief Court, Gilgit in Writ Petition No. 217/2017 is maintained. The above were the reasons for our short order dated 11.11.2020 which is reproduced below:

“The learned Advocate General, Gilgit-Baltistan has been heard. We have also gone the impugned judgment as well as available record on file. We do not find any illegality or infirmity in the impugned judgment. Therefore, for the reasons to be recorded later, leave in the above CPLA No. 117/2019 is refused. The impugned judgment dated 03.10.2018 passed by the learned Gilgit-Baltistan Chief Court, Gilgit in Writ Petition No. 217/2017 is maintained”

Chief Judge

Judge

Whether fit for reporting **(Yes / No)**