

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. 54/2016

In

CPLA. No. 07/2013

1. Chief Engineer NAPWD Gilgit and 02 others.

Petitioners

VERSUS

1. Haji Gohar s/o Folad and 09 others.

Respondents

Present:-

1. The Advocate General Gilgit-Baltistan alongwith Mr. Muhammad Issa senior Advocate and mr. Ali Nazar Khan Advocate-on-Record for the petitioners.
2. Mr. Munir Ahmad Advocate alongwith Mr. Rehmat Ali Advocate-on-Record on behalf of the respondents.

DATE OF HEARING:- 28-04-2017.

DATE OF DETAIL JUDGMENT:-08.2017.

JUDGEMENT

JAVED IQBAL, J..... This petition has been directed against the impugned judgment passed by learned single bench of Chief Court Gilgit-Baltistan vide judgment C. Rev. No. 76/98 dated 25-06-2012. Whereby the learned single bench of Chief Court Gilgit, has dismissed the petition under section 12(2) Civil Procedure Code filed by the petitioners/Appellants.

2. The brief facts as stated by the petitioners are that the respondents filed a reference petition u/s 18 of Land Acquisition Act 1894 in the Court of Land Acquisition

Judge/District Judge Gilgit against the award No. DK-1(1)/2003-06, dated March, 1991 passed by Collector Ghizer wherein the respondents claimed enhancement of rates of lands, trees and structure.

The Land Acquisition Judge enhanced the rates of land but erroneously accepted a fake list of trees fabricated by one unconcerned patwari, wherein signature of FWO concerned officials forged and fake stamp affixed and much time after filing of reference petition and after closing of evidence filed in the court the said forged list.

The learned court recorded statements of parties and their witness in the connected reference petition titled Shah Zaman and others versus Collector Ghizer and others wherein the typist mistakenly typed statement of rates of trees as Rs. 6000/- instead of Rs. 600/- for big fruit trees Rs. 4000/- in place of Rs. 400/- for medium fruit bearing trees Rs. 2000/- instead of Rs. 200/- for small Rs. 1000/- instead of Rs. 100/- for infant trees, like wise Rs. 4000/- instead of Rs. 400/- for big non fruit trees Rs. 2000/- instead of 200/- for small and Rs. 1000/- instead of 100/- for small trees the trial court after correcting the figures by inserting cross on the last zero of each figure leaving the rates 600/-, 400/-, 200/- and 100/- with a ball point and directed the staff to place the corrected copies on each of the other connected case files, as the statement of DWs recorded in the above case was relied in the other connected cases, but by way of fraud and collusion through dishonesty means the corrected copy was not placed in the file of the case

of respondents/ Haji Goahr and others whereas the corrected copies were placed in the three other connected cases.

Vide impugned judgment the learned trial court fixed Rs. 3000/- rate for big trees and Rs. 1000/- for medium and small trees irrespective of fruit or non fruit bearing.

At the time of recording of evidence of PWs Land Acquisition Judge Ghizer and even at the time of passing judgment no documentary evidence was available on file of the reference u/s 18 Land Acquisition Act on behalf of present respondents before the trial court and the forged and fabricated documents called exhibit P1 to P3 by the learned Chief Court were in the pocket of PW patwari Naseem, therefore they were at the time of recording of statements of PWs were not exhibited. The said forged documents were placed on the file subsequently.

The respondents filed appeal in the Chief Court against the judgment of trial court. The learned Chief Court called record of the trial court and on the basis of the said uncorrected copy of the statement of DW Tehsildar Muhammad Sharif (P-155 of this CPLA) the learned Chief Court enhanced the rates as per incorrect typing by fixing rates of 6000/- big trees, 4000/- medium trees, 2000/- small and annexed at serial no. 12-A of the index whereas record of the connected reference case titled Shah Zaman and others versus Collector is annexed at serial no. 12-B of the index.

At the time of execution of the decree in the trial court the judgment debtor/present appellants to ascertain the actual facts of the case constituted a departmental inquiry committee which after investigation found the above referred unfair practices and fraud on the part of decree holders, hence after having knowing the fraudulent practices of present decree holders, the judgment debtors/present appellants filed application under section 12(2) C.P.C before the Hon'ble Chief Court and established/proved the case beyond any doubt. But contrary to facts and record the learned Chief Court passed the impugned judgment. Hence this appeal.

3. The learned Advocate General Gilgit-Baltistan and Mr. Muhammad Isa, senior Advocate, contended, that, impugned judgment is in-correct, baseless contrary to law and facts, vague and misconceived, and ex-parte judgment. They also contended that the learned Chief Court Gilgit-Baltistan has passed the order/judgment which is impugned, without considering and discussed the issues framed in the case property. The learned Advocate General and Mr. Muhammad Issa, senior Advocate, further contended, that learned Chief Court did not bother to discussed the documentary as well as oral evidence produced by the appellants/petitioners because the case in hand involved fraud, mis-representation and forgery. The learned counsel also contended, that, the appellants/petitioners proved the case under section 12(2), but learned Chief Court Gilgit malafidely did not refer its findings,

and liable to be set aside. The learned Advocate General contended, that, while passing impugned judgment/order by single bench of learned Chief Court, failed exercise his jurisdiction, and with material irregularity not so vested in it. The learned single bench of Chief Court while passing impugned judgment, failed to appreciate the inquiry report. Finally, the learned counsel of appellants/petitioners prayed that, by accepting this civil leave to appeal, set aside the impugned judgment dated 25-06-2012, passed by single bench of learned Chief Court in Civil Misc. No76/2008 and grant the petition under section 12(2) Civil Procedure Code against judgment of learned Chief Court, dated 17-06-1996, passed in Civil Appeal No. 36/94, for ends of justice and equity.

4. On the other hand the learned counsel for the respondents Mr. Muneer Ahmed, Advocate contended, that, no fraud or mis-representation has been committed by the respondents as well as learned Land Acquisition Judge and learned Chief Court Gilgit. Judgment/order, passed by learned Chief Court Gilgit is well reasoned.

5. We have heard, the learned counsel of respective parties at great length, perused the record of case file. As regard section 12(2) Civil Procedure Code fraud or mis-representation has been occurred either the parties, same is regulated under section 12(2) Civil Procedure Code which provides as under:-

Section 12(2) C.P.C,

[(2) Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit.

A careful perusal of above quoted provision of section 12(2) of Civil Procedure Code enhancement of compensation through fraud and mis-representation can be challenged through Section 12(2) Civil Procedure Code. The learned single bench of Chief Court Gilgit, has erred that during execution proceedings, fake and forgery of record of trees by unconcerned patwari was discovered in learned Chief Court Gilgit. The learned Chief Court did not consider above facts and points under section 12(2) which were necessary.

6. In view of above discussion, we agreed with the contentions raised by the learned senior counsel Mr. Muhammad Issa and learned Advocate General. We deem it proper the petition converted into appeal and allowed. The impugned order/judgment passed by learned single bench of Chief Court dated 25-6-2012 is set aside and the case remanded back to learned Acquisition Judge Ghizer, to decide a fresh in its own merits as well as the impugned judgment/decreed dated 17-6-1996 in CC.CA-36/94 passed by learned Member II of Chief Court NA's set aside vide our short order dated 28-4-2017. These were the reasons for the said short order.

This appeal is allowed in above terms.

JUDGE

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Whether the case is Fit to be reported or Not?