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.44/2020

(Against the judgment dated 04.06.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No.232/2019)

1. NHA, through Chairman Islamabad
2. Project Director NHA, Juglote Skardu Road (JSR) Project

..... **Petitioners**

Versus

Affectees of Juglote Skardu Road through:

1. Arif Hussain s/o Nisar Hussain
2. Ali Ahmed s/o Ghulam Mehdi
   Residents of Dambodass Rondu,
   District Skardu

..... **Respondents**

1. Prov. Government of GB through Chief Secretary
2. Commissioner Baltistan Division
3. Collector/DC Skardu
4. Secretary Works, Gilgit-Baltistan
5. Chief Engineer Works Baltistan Division
6. Executive Engineer B&R Sub-Division Skardu

Proforma Respondents

PRESENT:

For the Petitioners:	Mr. Latif Shah Sr. Advocate Dy. Attorney General
For the respondents:	Mr. Amjad Hussain Sr. Advocate
For Pro. Respondents:	The Advocate General, GB Chief Engineer, Works Gilgit Div.
Date of Hearing :	**13.10.2020**

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 04.06.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 232/2019, whereby writ petition filed by the respondents was partially allowed to the extent that cost reassessment of buildings/structures be carried out by the engineers of presents respondents.

2. Brief facts of the case are that Government of Pakistan, under the Federal PSDP, approved the Project of upgradation of "Juglote-Skardu Road" (JSR). The contract of this project has been awarded to Frontier Works Organization (FWO). During construction of road, an issue arose between owners/affectees and the acquiring agency as to cost assessment of the buildings/structure at Dambodass Rondu. In order to resolve the issue of cost assessment, on 17.04.2019, Commissioner Baltistan Division held a meeting with the concerned authorities. In sequel to this meeting, on 20.04.2019, Chief Engineer Works, Baltistan Division held another meeting with the Members of Board, finalized structures' rates and issued notification thereof on 22.04.2019. This notification was communicated to National Highway Authority (NHA). Subsequently, on 09.05.2019 and 18.05.2019, Executive Engineer Works Department, Skardu convened meetings of Board Members and issued report of board proceedings wherein he recommended fewer rates of buildings/structures as compared to rates approved and circulated through notification dated 22.04.2019. The Chief Engineer also accorded his approval to the rates decided in the board proceedings dated 09.05.2019 and 18.05.2019. Being aggrieved and dissatisfied with the rates fixed by Executive Engineer B&R Skardu and approved by the Chief Engineer Works Baltistan Division, the present respondents

invoked the writ jurisdiction of the learned Gilgit-Baltistan Chief Court for issuance of a writ against the petitioners for implementation of rates notified through Notification dated 22.04.2019 and setting aside the board proceedings dated 09.05.2019 and 18.05.2019. They further prayed for fixation of rates of buildings/structures as per the prevailing rates with Works Department, Gilgit-Baltistan as an alternate remedy. The learned Gilgit-Baltistan Chief Court vide impugned judgment, partially allowed the writ petition and set aside the recommendations dated 22.04.2019 and 18.05.2019 and directed the present petitioners to reassess the costs of damages caused to buildings/structures during execution of the project in question through their own Engineers. Being aggrieved and dissatisfied, the present petitioners have challenged the impugned judgment by way of the CPLA in hand.

3. It is contended by the learned counsel for the present petitioners that impugned judgment passed by the learned Gilgit-Baltistan Chief Court is not sustainable on the ground that engineers of the present petitioners have no mandate and expertise of costs assessment in respect of damages to buildings/structures etc. It is next contended by the learned counsel for the present petitioners that under the provisions of the Land Acquisition Act, 1894, disputes arising out of or relating to compensation in respect of land acquisition/damages to structures, reference is required to be submitted to the Referee Judge. He next argued that since the matter relates to enhancement of compensation rate, therefore the matter called for referring to the Referee Judge for determination of rates as per the provisions of the Land Acquisition Act 1894. The learned counsel for the present

petitioners next maintained that NHA is merely an acquiring agency, hence has nothing to do with any active role in preparation and finalization of compensation rates, whereas reducing or enhancing the compensation rates is the sole prerogative/discretion of District Collector. At the conclusion of submissions basing on the above facts, grounds and legal position, learned counsel for the present petitioners prayed for setting aside the impugned judgment.

4. We have heard arguments advanced by the learned counsel for the present petitioners. With the able assistance of the learned counsel, we have also gone through available record as well as the impugned judgment.

5. It is an admitted fact that during upgradation of Juglote-Skardu Road, structures were affected at various places alongside the road. The affectees of structures at Tehsil Rondu, Skardu showed reservations and dissatisfaction over cost assessment of damages to the structures and fixation of compensation rates thereof by the concerned agencies. As such, they started approaching the concerned authorities for redressal of their grievances. As a consequence of constant struggle and submission of representations on behalf of the affectees, the Commissioner Baltistan Division called a meeting on 20.04.2019 to resolve the issues relating to cost assessment of damages to structures and fixation of compensation rates thereof. As a result of this meeting, the Chief Engineer Skardu Division convened a meeting with concerned authorities and finalized compensation rates in respect of damages to structures etc. and notified the said rates through notification dated 22.04.2019. Subsequently, the Executive Engineer B&R

Division Skardu convened meetings of Board of Officers. On 09.05.2019, Board of Officers assembled and recommended compensation rate of structures which were approved by the Chief Engineer Baltistan Division. On 18.05.2019, Board of Officers again assembled and recommended another compensation rate of structures which was also approved by the Chief Engineer Works Baltistan Division. The subsequent compensation rates of structures recommended by the Board of Officers on 09.05.2019 and 18.05.2019 and approved by Chief Engineer were not commensurate with the ones approved and notified on 22.04.2019. Determination of subsequent compensation rates of structures by Board of Officers and superseding the rates already notified on 22.04.2019 that too without assigning any reason thereof is not understandable. The present petitioners and Officers of Works Department, Skardu have failed to place any material on record to substantiate the reasons for frequent fixation and cancellation of compensation rates of structures.

6. Now we consider it necessary to advert to the contentions of the learned counsel for the present petitioners. The first contention of the learned counsel that neither NHA has expert engineers nor it is their mandate to assess the costs of damages to structures is not tenable. NHA is the biggest governmental side highway construction authority having a very vast manpower including engineers. Therefore this submission of the learned counsel is neither logical nor plausible. If Engineers working with Works Department have expertise and mandate to assess the damages to buildings/structures etc. during construction of roads, then why the engineers of NHA lack expertise and mandate of assessment of damages whereas engineers of both

departments perform the same nature of job. Even, for the sake of arguments, if it is admitted that engineers of NHA have no expertise and mandate of assessment of damages, yet there is no hurdles for NHA to hire private well experienced engineers of relevant field for cost assessment of buildings/structures damaged/affected during the course of construction of the road in question on need basis. Needless to mention that NHA has been using to hire required manpower for execution of its projects on temporary and need basis. Therefore, in the case in hand too, NHA can hire the requisite services of experienced engineers specifically for a period until the process of cost assessment of damaged buildings/structures comes to an end.

7. With regard to submission of the learned counsel for the present petitioners that since the matter related to enhancement of rate of compensation therefore, under the provisions of the Land Acquisition Act, 1894, the matter requires to be submitted to Referee Judge for determination of rates. There is no cavil to the legal proposition that when any matter is related to dispute regarding enhancement of compensation rates, the same could be referred to Referee Judge for determination of rates thereof, however it must be mentioned here that recourse to this legal remedy is only exercised by aggrieved parties where an award has already been passed by the District Collector. However, in this case, no award has been passed by the District Collector. Rather, at initial stage of cost assessment/fixation of structure rates, the issue of cost assessment and rates has arisen and culminated in litigation between the parties. It is clarified that under Section 18 of the Land Acquisition Act, 1894, reference can be filed before Referee Judge only in a case where, after

announcement of award by the District Collector, there arose any dispute or disagreement over compensation rates fixed by the Collector in the Award and not before passing of award by Collector. Section 18 of the Land Acquisition Act, 1894 is reproduced below:

> ***"18. Reference to Court**.—(1) Any person interested who has not accepted the award may, by written application to the Collector require that the matter be referred by Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested".*

Perusal of the above section unambiguously makes it clear that a reference can only be sent to Referee Judge after announcement of an award and not be before that. In this regard, we would like to lend some support from a judgment of the Hon'ble Supreme Court of Azad Jammu & Kashmir in a case reported as Zainab Bibi Vs. Zainab Bibi 2017 CLC 145 wherein the Hon'ble Court has while clarifying the question whether a reference can be filed before the Referee Judge before announcement of award or otherwise has held as under:

> *"Section 18 of the Land Acquisition Act, 1894 would come into operation after issuance of award and not before that"*

In addition, in a case titled Prov. Government through Chief Secretary Gilgit-Baltistan & others Vs. Asghar Ali & others CPLA No.117/2019 this Court has held as under:

> *"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"*

Taking into consideration the above legal position, we are not inclined to hold the submissions of the learned counsel for the present petitioners to be of any assistance to substantiate his view point.

8. Regarding submissions of the learned counsel for the present petitioners that NHA being merely an acquiring agency has nothing to do with any active role in preparation and finalization of compensation rates and that reducing or enhancing the compensation rates is the sole discretion of District Collector, it would be just and proper to clarify that merely on pretext of being an acquiring agency, NHA cannot be absolved from its legal obligations. The prime role in the case requires to be played by NHA because the issue in hand is regarding satisfaction of affectees in terms of compensation which must be adequately enough to make good the losses sustained by them on account of damages to their buildings/structures. Obviously, NHA is the acquiring agency and payment is required to be made by it through District Collector Skardu, therefore NHA cannot absolve itself from legal obligations of payment of compensation to the affectee. It is further clarified that no doubt, DC/Collector has discretion of reducing or enhancing the compensation rates in respect of land acquired for construction of any project subject to approval of provincial government, however he is bound under the law to exercise that power in observance of parameters provided under the Land Acquisition Act.

Contrarily, the issue in hand is regarding cost assessment of structural damages; hence the same can be accomplished in better way by the professional engineers. Although, the Collector has nothing to do with the job of cost assessment in respect of buildings and structures etc. however, being District Collector, he may order the acquiring agency to get the job done either by its own engineers or if the need arises, through private engineers or can ask/get the cost assessment done by engineers of others departments of provincial government. Thereafter, cost assessment of structural damages so assessed by engineers is forwarded to DC/ Collector for inclusion thereof in the Award. As such, the submissions made by the learned counsel for the petitioners in this regard has also failed to find our favour, thus are not tenable.

9. Without prejudice to factual and legal position prevailing with this case, in general perspective, it would be appropriate to highlight the significance of land/property for the owners. Keeping in view significance and potentiality that right to property is included and protected as a fundamental right under the Government of Gilgit-Baltistan Order, 2018 read with Article 24 of the Constitution of the Islamic Republic of Pakistan besides enactment of Land Acquisition Act to deal with the issues relating to land/ property. Thus, in view of legal right guaranteed under the Gilgit-Baltistan Order, 2018 read with the Constitution of Islamic Republic of Pakistan, no person can be deprived of from this right without sufficiently compensating him. For ease of reference, article 76 of Government of Gilgit-Baltistan Order, 2018 is reproduced 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"*

With regard to protection afforded to landowners of their fundamental right enshrined under Article 24 of the Constitution, in a case reported as 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:

> *"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".*

10. The considerable and significant aspect involved in this case is with regard to payment of compensation to affectees in accordance with the law and to reasonable satisfaction of owners and affectees, especially keeping in view the significance and potentiality of structures and land. Section 23 of the Land Acquisition Act, 1894 deals with determination of compensation to owners and affectees in lieu of their land and structures. This section entitles the land owners and affectees to the compensation and not just the market value. Hence loss by change of residence or place of business and loss of profits are also relevant. With reference to section 23 of the Land Acquisition Act, 1894 for determination of compensation, the Hon'ble Supreme Court of Pakistan in case reported as Land Acquisition Collector G.S.C., (WAPDA) Lahore and another Vs. Mst. Suraya Mehmood Jan 2015 SCMR 28 has held as under:

> *"A bare reading of the provision in question i.e. section 23 of the Act of 1894 reveals that the landowner is entitled to compensation and not just market value, hence, loss or injury occasioned by its severing from other property of the landowner, by change of residence or place of business and loss of profits are also relevant".*

It would be advantageous to mention that acquisition of land/structures by the acquiring agency deprives the owners from their property which may have potential value for them. In some cases, the property/land is the only source of livelihood for the families of affectees. As such, the owners cannot be left to bear double jeopardy i.e. in first place loss in terms of depriving him from the property and in second place loss in terms of denial to adequate compensation to the owners in lieu of their land/property. In another place in the case titled Prov. Government through Chief Secretary Gilgit-Baltistan & others Vs. Asghar Ali & others CPLA No.117/2019, this Court regarding compensating the land owners/affectees, has held as under:

> *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.*

The Hon'ble Supreme Court of Pakistan a case reported as MST. IQBAL BEGUM's case (PLD 2010 Supreme Court 719) has also been pleased to hold 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".*

11. 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. 44/2020 is refused. Impugned judgment dated 04.06.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 232/2019 is maintained with some additions that the assessment of structures shall not be less than the rates assessed by the Chief Engineer, Works Department Skardu Division and issued through notification dated 22.04.2019 or as per the latest structure rates prevailing with the Works Department, Gilgit-Baltistan. The above were the reasons for our short order dated 13.10.2020 which is reproduced below:

> *"The case has been heard. We have not been able to find any illegality or infirmity in the impugned judgment dated 04.06.2020 passed by the learned Gilgit-Baltistan Chief Court, Gilgit in Writ Petition No. 232/2019. Therefore, for the reasons to be recorded later, in the above CPLA No. 44/2020 leave is refused"*

Chief Judge

Judge

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