SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.

Raja Saeed Akram Khan, J.

Civil Appeal No. 394 of 2015

(PLA filed on 20.11.2015)

1. Usman Ali Khizar Khan,
2. Baya Khizar Khan,
3. Mst. Ambreen Khizar,
4. Noreen Khizar, daughters of Muhammad Khizar Khan,
5. Mst. Shamim Begum, widow of Muhammad Khizar Khan,
6. Raja Muhammad Sulqarnain Khan s/o Raja Muhammad Afzal Khan,
7. Qaisar Zulqarnain s/o Muhammad Zulqarnain Khan,
8. Muhammad Waleed Khan,
9. Muhammad Saeed Khan,
10. Muhammad Naveed Khan, sons,
11. Mst. Saeeda Begum,
12. Mst. Waheeda Begum,
13. Mst. Fareda Begum,
14. Mst. Robina Begum,
15. Mst. Shehnaz Begum, daughters of Muhammad Yaqoob Khan,
16. Urooj Hussain,

16-A Irfan Hussain,

16-B ZAheer Hussain,

16-C Sohail Hussain sons of Hassan Akhtar Khan,

17. Shamim Akhtar Khan,
18. Naeem Akhtar Khan, sons,
19. Mst. Andleeb Akhtar, daughter of Muhammad Azam Khan,
20. Aamir Shamim, son,
21. Mst. Tabassum Shamim,

22. Mst. Shabnum Shamim, daughters of Mst. Zubaida Begum,
23. Mst. Bashir Begum, widow,
24. Azeem Akhtar,
25. Waheed Akhtar, sons,
26. Mst. Itrat Begum,
27. Mst. Isharat Begum,
28. Mst. Noureen Begum,
29. Mst. Nuzat Begum, daughters of Muhammad Akram Khan,
30. Sheryar Khizar Khan, sons of Muhammad Khizar Khan,
31. Mussarat Shamim,
32. Tarmeen Akthar,
33. Muhammad Tariq Khan,
34. Tanveer Akthar Khan, sons,
35. Mst. Robina Begum, daughters of Muhammad Akram Khan. All residents of village Kasguma (old) new village Chapra, former District Mirpur, now Tehsil Bhimber, District Bhimber.

…. APPELLANTS

VERSUS

1. Water and Power Development Authority, having its headquarter WAPDA House, Lahore through General Manager Power House Mangla Mirpur.
2. Azad Govt. of the State of Jammu & Kashmir, through its Chief Secretary.
3. Board of Revenue, Azad Jammu & Kashmir through its Senior Member Board of Revenue, Civil Secretariat, Muzaffarabad.
4. Commissioner, Mirpur Division Mirpur.
5. Collector Land Acquisition, Mangla Mirpur.

….. RESPONDENTS

(On appeal from the judgment of the High Court dated 7.10.2015 in Writ Petition No.784 of 2011)

FOR THE APPELLANTS: Raja Muhammad Hanif Khan, Advocate.

FOR RESPONDENT NO.1: Mr. Sajid Hussain Abbasi, Advocate.

Date of hearing: 16.2.2017.

JUDGMENT:

Mohammad Azam Khan, C.J—The titled appeal by leave of the Court arises out of the judgment of the High Court dated 7th October, 2015, whereby writ petition No. 784 of 2011 filed by the appellants, herein, has been dismissed.

2. The necessary facts for disposal of this appeal are that the appellants filed a writ petition stating therein that the land of the appellants was acquired through award Nos. 7/63 and 28/64 in the year 1963 and 1964 respectively. According to the appellants, the land was not required by Water and Power Development Authority (WAPDA) for construction of Mangla

Dam, therefore, the possession of the land was not taken over by WAPDA and it all along remained in their possession. They alleged in the writ petition that under section 48(1) of the Land Acquisition Act, 1894, if the possession of the land is not taken over then the Government may withdraw from the award. It was alleged in the writ petition that some pieces of land which was acquired for construction of Mangla Dam and the allied purposes was not utilized for Mangla Dam and allied purposes and has been de-awarded in favour of the land owners. They relied upon a number of notifications whereby the land was de-awarded in favour of the previous land owners. They alleged that they approached the Government for exercising its power under section 48(1) of the Land Acquisition Act, 1894, but the Government has not decided the case. The writ was dismissed on 22.10.2013. The appellants filed an appeal by leave before this Court. During the pendency of appeal, the counsel for the appellants moved an application

for amendment in the writ petition on the ground that the appellants have come to know that the representation filed by the appellants had been dismissed by the Government on 21st January, 2011 and the order was not conveyed to the appellants, as is evident from the direction issued by the High Court that the Government shall decide the pending application filed by the petitioners. One of the appellants field an affidavit that the order was not conveyed to the appellants, therefore, the appellants were allowed to amend the writ petition and they were directed to file the amended writ petition within a period of two weeks. After the remand order, the appellants filed the amended writ petition, whereby they challenged the order passed by the Government on 25th September, 2011. The learned High Court after seeking amended written statement and hearing the arguments dismissed the writ petition on 7th October, 2015 with an observation that the question is left open to the discretion of respondent No.1, WAPDA to

issue no objection certificate (N.O.C) and the appellants may approach to WAPDA, hence, this appeal by leave of the Court.

3. Raja Muhammad Hanif Khan, Advocate, the learned counsel for the appellants argued that the judgment of the High Court is against law and not maintainable. The land of the appellants was acquired for construction of Mangla Dam and allied purposes, but the same was not required for construction of Mangla Dam and the land all along remained in the possession of the appellants and is still in their possession. It was never utilized by the WAPDA. He submitted that the land measuring thousands of Kanals acquired by WAPDA for construction of Mangla Dam but not utilized for the purpose for which it was acquired, has been de-awarded in favour of the previous land owners and the Government has withdrawn from the award. He argued that the appellants have placed on record a number of notifications, whereby the acquired land has been de-awarded in favour of the

previous land owners. He argued that under section 48(1) of the Land Acquisition Act, 1894, the Government may withdraw from the award if the possession of the land is not taken. He argued that the refusal by the respondents is discriminatory. Equal Protection of law is guaranteed by fundamental rights enshrined in the Constitution. The case of the appellants is being treated by the WAPDA authorities in a discriminatory manner. He argued that the Supreme Court of Pakistan and this Court in a number of cases have observed that if the land of a land-owner is acquired for a public purpose and after fulfilling the said public purpose if some land remains surplus, the Government is at liberty to utilize the same for any other public purpose provided the other public purpose is proved from an approved scheme. There is no approved scheme of WAPDA for utilization of the surplus land, which is in the possession of the appellants, the previous land-owners. He submitted that a commission consisting of

Commissioner Mangla Dam Raising Project, Commissioner Mirpur Division and Deputy commissioner, Bhimber, was constituted to determine the position and location of the land of the appellants as well as the land which has been de-awarded by the Government. He submitted that the land which has been de-awarded in favour of the previous land-owners is situated just at a distance of 100 ft. away from the Dam wall. Same like the acquired land having similar position and location has also been allotted to some individuals. The commission submitted its report that the land which has been de-awarded is situated near to the Dam wall whereas the land of the appellants is situated far away from the Dam wall. The learned counsel submitted that the appellants filed the amended writ petition. In reply to the amended writ petition, the appellants, instead of filing the amended written statement on the points which were newly inserted in the amended writ petition, have filed a totally new written

statement with a changed stance. He submitted that the respondents have taken the plea that the safety limit of Dam extends to 2500 feet while the land of the appellants comes within the safety limit, therefore, it cannot be de-awarded in favour of the appellants which is factually incorrect. He argued that the Government has not filed the written statement. The appellants have filed an affidavit in support of the contents of the writ petition as well as the amended writ petition and the affidavit has not been rebutted. The possession of the appellants is also proved from the record i.e. *Khasra Girdawari* **(خسرہ گرداوری)**. The learned counsel submitted that the right to the property is a constitutionally guaranteed right. The appellants have a right to be treated in the like manner in which the other persons have been treated. The learned counsel referred to the case law reported as *Sajida Maqsood vs. Azad Government through its Chief Secretary, having his office at Civil Secretariat, Muzaffarabad and others* (2013 SCR 461), *Syed*

Qasim Gillani vs. University of AJ&K & 5 others (2015 SCR 123), 2003 YLR 291(no judgment on this page), *Pervaiz Khan and 27 others vs. Adalat Khan and 217 others* (2013 SCR 262), and *Province of Punjab through Collector, Lahore and another vs. Saeed Ahmed and 4 others* (PLD 1993 SC 455).

4. While controverting the arguments Mr. Sajid Hussain Abbasi, Advocate, the learned counsel for respondent No.1 argued that the writ petition is hit by laches. The appellants have challenged the order dated 1st November, 2011 by filing the amended writ petition, which was filed on 28.10.2014, as such, the writ petition merited dismissal. The learned counsel further submitted that the land was acquired in the year 1963-64 and the award cannot be struck down. He submitted that a number of people are in illegal possession of the land of WAPDA, which is situated near to the Dam wall. The N.O.Cs. granted in favour of these persons have been withdrawn through notification dated 18th

January, 2016. He submitted that WAPDA wants to upraise the Mangla Dam for the third time. On query by the Court, he frankly conceded that no scheme for upraising of the Mangla Dam for the third time has been prepared by WAPDA. On query by the Court that it is in the judicial notice of the Court that a number of huge buildings i.e. marriage halls, petrol stations and factories have been constructed over the acquired land, which have been allotted to different persons and are situated just at a distance of 100 to 200 ft. from the Dam wall, whether after the notification dated 28th January, 2016, WAPDA has issued any notice to such persons for demolishing the structure raised in the land allotted by the Government which was acquired for construction of Mangla Dam and was not utilized by WAPDA, the learned counsel submitted that no such notice has ever been issued. The learned counsel lastly requested for dismissal of the appeal.

5. We have heard the learned counsel for the parties and perused the record. The land of the appellants was acquired for construction of Mangla Dam and allied purposes through award Nos. 7/63 and 28/64. The land has not been utilized for construction of Mangla Dam. It is still lying vacant. From the perusal of record i.e. *Khasra Girdawari* (خسرہ گرداوری), it is proved that the possession of the land is still with the land owners. The land was acquired in the year 1963-64. The writ petition was filed in the year 2011. The process of award cannot be challenged after such a long time. The writ petition to this extent is not maintainable. The appellants have challenged the Government order dated 1st September, 2011 in the background that the appellants and some others moved an application to the Government for withdrawing from the award under section 48(1) of the Land Acquisition Act, 1894. The application remained pending with the Government for a long time, which was dismissed on 1st September, 2011, but the order was not conveyed to the appellants.

When they acquired knowledge, they immediately moved an application for amendment in the writ petition. It is worth mentioning that the High Court while disposing of the writ petition, in the first round of litigation, directed the Government to decide the application pending before it. During the pendency of the appeal in this Court, the appellants acquired knowledge that their application has been rejected. They filed an application in this Court for amendment in the writ petition. The application was allowed and the case was remanded to the High Court that it shall receive the amended writ petition and after seeking amended written statement decide the writ petition. As such, the question of laches to the extent of order dated 1st September, 2011 is not attracted in the case. It has already been decided by the Court in the previous round of litigation.

6. A perusal of record reveals that the land of different persons in village Khokhar, Gheelay, Kalas, Dhal Mehmood and Mughal has been de-awarded by the Government. The WAPDA through letters dated 28th February, 1974, 9th October, 1973 placed the land on the disposal of the Commissioner, Mangla Dam for de-awarding the

same in favour of the previous land-owners. The land has been de-awarded through notification dated 9th December, 1997 in the villages Khokhar, Kalas, Gheelay. There is also a letter of the Deputy Commissioner/ Collector District Bhimber addressed to the Commissioner Mirpur Division, whereby he reported that the land in dispute is *Ghairmumkin Pabby* (غیرممکن پبی). The land owners are utilizing the land for cutting gross and trees. The WAPDA has not yet issued the N.O.C. He also reported that previously the land has been de-awarded in the vicinity from village Khokhar, Kalas and it is not required for any other public purpose. On this report, the Commissioner Mirpur Division through letter dated 6th January, 2010 addressed to the Secretary Board of Revenue, submitted that the land is still in the possession of the previous owners and despite receiving the compensation, the land-owners are utilizing it for grazing the animals and cutting gross and trees. He reported that after obtaining N.O.C. from WAPDA, the Government may withdraw the award under section 48(1) of the Land Acquisition Act, 1894. When it is proved that after acquisition the land has not been utilized by the

WAPDA for the purpose it was acquired and the land is still in the possession of the previous land-owners as the possession is proved from the report made by the Revenue authorities and the revenue record i.e. *Khasra Girdawari* (خسرہ گرداوری). On the application of the appellants, a commission was constituted by the Court consisting on Commissioner, Mangla Dam Affairs, Revenue Commissioner Bhimber and Deputy Commissioner Mirpur Division and they were directed to submit the report in the light of the record and they shall co-opt the Chief Engineer, WAPDA/Mangla Dam, for spot inspection. The Commission submitted the report after perusal of record and making spot inspection in the company of Chief Engineer, WAPDA, Mangla. The WAPDA put its version in written form before the Commission, which is part of the record. It is necessary to reproduce here the report of commission dated 5th May, 2016 and the statement of WAPDA attached with the said report, which speak as under:-

بخدمت

رجسٹرار صاحب

سپریم کورٹ آزاد جموں و کشمیر

مظفر آباد۔

عنوان:۔ رپورٹ مطابق احکامات عدالت العظمیٰ مورخہ ۱۳-۴-۲۰۱۶ بمقدمہ عثمان علی خضر وغیرہ بنام واپڈا وغیرہ آئندہ تاریخ پیشی ۵-۵-۲۰۱۶

السلام علیکم!

معاملہ عنوان الصدر میں بروئے نوٹس نمبر ایس سی/ 2016/5165-68 مورخہ 14.04.2016 معزز عدالت العظمیٰ کے احکامات مورخہ 13.4.2016 کے تحت مقدمہ عنوان بالا میں اراضی متدعویہ کے بارہ میں ریکارڈ کی روشنی میں رپورٹ کرنے کی ہدایت کی گئی۔ اراضی متدعویہ ڈپٹی کمشنر بھمبر، چیف انجینئر منگلا ڈیم آرگنائزیشن واپڈا منگلا کے ہمراہ 28.04.2016 کو موقع ملاحظہ کرنے کے علاوہ ریکارڈ مال کا ملاحظہ کیا گیا۔

۱۔ صورت موقع

i۔ اراضی متدعویہ نمبر خسرہ 1373 موضع چھپڑا تحصیل بھمبر، میرپور۔ کوٹلی روڈ جڑی کس بند سے گزر کر جڑی کس پارک کے پاس جانب جنوب واقع ہے اس مقام پر منگلا ڈیم کی دیوار (بند) موضع پوٹھہ بنسی اور موضع کاکڑہ میں تعمیر شدہ ہے۔ اور اراضی متدعویہ موضع چھپڑا تحصیل بھمبر میں واقع ہے اور موضع چھپڑا کا حد بست منگلا ڈیم کی دیوار سے 165 فٹ دوری پر واقع ہے اس طرح اراضی نمبر خسرہ 1373 موضع چھپڑا تحصیل بھمبر منگلا ڈیم کی دیوار (بند) سے 165 فٹ دوری پر واقع ہے۔

ii۔ قبل ازیں محکم واپڈا کی جانب سے سپرد/حوالہ (Surrender) کی گئی اراضیات جس کا تذکرہ اپیلانٹس نے اپنی درخواست مورخہ 12.4.2016 کے ضمن (B) میں کیا ہوا ہے۔ ماسوائے آخری تین مقامات کے دیگر تمام مقامات میرپور وینہ روڈ پر واقع ہیں۔ جن میں اراضی نمبر خسرہ 429 موضع عزیز پور میں واقع گلشن جبیر اور اراضی نمبر خسرہ 498 موضع عزیز پور میں واقع PSO پٹرول پمپ 210 فٹ اور اراضی نمبر خسرہ 445 موضع بڑبن میں تعمیر شدہ پٹرول پمپ منگلا ڈیم کی دیوار سے صرف 121 فٹ دوری پر واقع ہیں اور ان تعمیرات کے زیر آمدہ رقبہ تعداد ی 97 کنال بروئے فرمان حکومت نمبر 1976/335-343 مورخہ 08.06.1976 بذریعہ بیع نامہ مورخہ 04.03.1981 کو پاک کشمیر ماچس فیکٹری کے نام منتقل ہوا البتہ مواضعات کھوکھر، گیلے، کالس، ڈھل محمود کا منگلا ڈیم کے لئے ایوارڈ شدہ رقبہ کا سابقہ مالکان کو واپس کرنے کے لیے محکمہ واپڈا کی جانب سے زیر نمبر RSM?REV-5/25/ مورخہ 02.04.1974 ایوارڈ منسوخ کرنے کی استدعا پر ڈی ایوارڈ کا نوٹیفکیشن زیر نمبر آر/1997/5146-54 مورخہ 09.12.1997 کو جاری ہوا۔

2۔ صورت ریکارڈ

i۔ مطابق ریکارڈ مال اراضی متدعویہ نمبر خسرہ 1373 موضع چھپڑا تحصیل بھمبر ملکیتی آزاد حکومت ریاست جموں و کشمیر محکمہ واپڈا مذکور مقبوضہ راجہ محمد ذوالقرنین خان وغیرہ مالکان کھیوٹ نمبر 6 غیر موروثی درج ہے۔

ii۔ قبل ازیں محکمہ واپڈا کی جانب سے سپرد/حوالہ (Surrender) کی گئی اراضیات مواضعات عزیز پور، بڑبن میں واقع ہیں جو بیع نامہ ہو کر منتقل ہو چکی ہیں اور ان پر پٹرول پمپ اور میرج ہال تعمیر ہو چکے ہیں۔

محکمہ واپڈا کی جانب سے معاملہ زیر بحث کی نسبت تحریری طور پر رپورٹ (Statement) میں تحریر کیا گیا کہ منگلا ڈیم کی دیوار (بند) سے 2500 فٹ کی حد تک ڈیم کی حفاظت کے لیے رقبہ ایوارڈ کیا گیا ہوا ہے اور اس رقبہ کے قریب بند میں دیگر آلات نصب کئے گئے ہوئے ہیں اور ڈیم کے پانی کے سیم (Seepage) کی صورت میں یہ رقبہ زیر استعمال آتا ہے اور منگلا ڈیم کی ریزنگ کے بعد اس ایریا میں سیم (Seepage) ہو رہی ہے۔ محکمہ واپڈا نے قبل ازیں منگلا ڈیم کے لیے ایوارڈ شدہ کوئی رقبہ سپرد/حوالہ (Surrender) نہ کیا ہے اور نہ ہی کوئی رقبہ ڈی ایوارڈ کیا ہے البتہ کچھ ناجائز قابضین نے ایوارڈ شدہ رقبہ پر قبضہ کر لیا ہے جس کا اپیلانٹس نے اپنی درخواست میں ذکر کیا ہے۔ متذکرہ بالا وجوہات کی بناء پر ڈیم کی دیوار کے باہر مستقل بنیادوں پر منگلا ڈیم کے تحفظ کے لیے رقبہ جات ایوارڈ کیے گئے تھے کیونکہ منگلا ڈیم ملک و قوم کے مفاد کے لیے بنایا گیا ہوا ہے (ضمیمہ "الف")

معزز عدالت کے احکامات مورخہ 13.04.2016 کے مطابق ریکارڈ مال اور صورت موقع کا موازنہ کرنے کے پایا جاتا ہے کہ قبل ازیں موضع عزیز پور بڑبن سے محکمہ واپڈا کا رقبہ تعدادی 97 کنال حکومتی نوٹیفکیشن کی رو سے بذریعہ بیع نامہ منتقل ہوا اور اس کے علاوہ مواضعات کھوکھر، گیلے، کالس، ڈھل محمود سے ایوارڈ شدہ محکمہ واپڈا کی رضامندی سے اصل مالکان کو سال 1997 کو بروئے نوٹیفکیشن نمبر/ب آر/54-1997/5146 مورخہ 09.12.1997 واپس کیا گیا اور مابعد محکمہ واپڈا کے رقبہ پر آباد مہاجرین کو بھی مالکانہ حقوق ملکیت دیئے گئے۔

بالا صورتحال سے یہ عیاں ہوتا ہے کہ منگلا ڈیم کے لیے مختلف مواضعات سے ایوارڈ شدہ رقبہ قبل ازیں مختلف اشخاص کے نام بیع نامہ اور ڈی ایوارڈ ہو کر منتقل/واپس ہو چکا ہے اور جس رقبہ کی اپیلانٹس نے ڈی ایوارڈ کے لیے استدعا کر رکھی ہے موقع کے مطابق ہر دو رقبہ جات میں کوئی فرق نہ ہے بلکہ دونوں رقبہ جات منگلا ڈیم کی دیوار (بند) سے تقریباً یکساں فاصلہ پر واقع ہیں بلکہ قبل ازیں منتقل شدہ رقبہ جات اپیلانٹس کے مندعویہ رقبہ سے منگلا ڈیم کی دیوار کے زیادہ قریب واقع ہے اور ہر دو رقبہ جات ایک جیسی صورت موقع اور ریکارڈ کے حامل ہیں۔

رپورٹ بمراد ملاحظہ پیش خدمت ہے۔

ڈپٹی کمشنر	کمشنر	کمشنر
بھمبر	امور منگلا ڈیم	میرپور ڈویژن میرپور۔"

"WAPDA STATEMENT

With the directions of Honorable Supreme Court of AJK. Muzaffarabad, a joint visit of site of 2034 Kanal & 4 Marla and 444 Kanal & 3 Marla WAPDA land was made on April 28, 2016 by undersigned along with Commissioner Mirpur division, Commissioner Mangla Dam and Deputy commissioner Bhimber being members of commission constituted by the Supreme court.

The comments of the undersigned on behalf of WAPDA based on technical grounds regarding the said land are as under:

- The land of 2034 Kanal & 4 Marla and 44 Kanal & 3 Marla in village Kasgumma, District Bhimber was acquired by WAPDA during 1963 for construction of Dam.

- An embankment of dam and left rim works constructed at some portion of above land and remaining land adjacent to the dam embankment lying within the Dam safety limit of 2500 Rft from the toe of Dam defined by dam safety organization and consultants of Mangla Dam project according to International dam safety norms and standards. Various types of monitoring instruments like CG pots, survey pillars/control points, instrument house and seepage chamber have been installed to monitor changes in pore water pressure in different beds variation in movement of demand seepage flows to check the performance of dam embankment with the passage of time and also in case of any earthquake event in the project area.

- It is pointed out that the seepage chamber lying in this area was almost dry prior to raising of dam but now flowing after filling of reservoir up to raised maximum conservation level of 1242 ft SPD. This clearly indicates that the beds in this area have become

saturated and required vigilant monitoring.

- Strata adjacent to the embankment of dam is this particular area is erodible and may further deteriorate with the passage of time due to unexpected weather changes and seepage flows through the underlying strata desperately demand continuous and uninterrupted monitoring of this area lying within the safety limit of dam to safeguard these vital assets. Monitoring and Surveillance directorate of Mangla Dam Organization WAPDA was created after the completion of Mangla Dam in 1967 to carry out this monitoring task in such areas.

- Human intervention within the safety limit of dam always causes disasters and collapse of Khaliqabad area is an example where cutting and disturbing of natural hillock/strata has triggered land movement. The strata downstream of Kakra dam has the same geological features and any massive cutting, excavation and drilling activities on WAPDA acquired land within dam safety limit could aggravate the situation worse than khaliqabad. Any activity within the acquired land will effect sub-soil pore water pressure and increase seepages which will ultimately lead to disaster by jeopardizing the safety of dam and its allied structures.

- It is worth mentioning that the WAPDA has neither surrendered nor de-awarded any land acquired for the construction of the dam. However some encroachers have illegally occupied the WAPDA acquired land in the areas mentioned by appellant.

- Mangla dam is a strategic asset and its safety carry paramount importance and strata disturbing activity downstream of the dam cannot be allowed or even accepted. Therefore, acquired land remains in possession of WAPDA to safeguard these strategic assets at all costs.

- Keeping in view the above-mentioned technical limitation, WAPDA requires this acquired land on permanent basis being essential for safe reservoir operation for its designed life and optimum benefits for the country and nation.

CHIEF ENGINEER
MDO. WAPDA, Mangla"

It oozes out from the report that the land in dispute is situate in village Chhapra of District Bhimber at Kotli road Jari Kas. The Dam wall is constructed in village Potha Bansi and Kakra. The boundary limit of village Chhapra is 165 feet away from Dam wall. The said land is further

away from the boundary of village Chhapra. It is submitted that the acquired land from the village Azizpur has been de-awarded wherein Gulshan Jabeer building is constructed and there is also a Petrol station. These are situated at the distance of 210 feet from the Dam wall and another Petrol station is constructed only at a distance of 120 feet from the Dam wall. The said land was an acquired land and has been sold by the Government through notification dated 8th June, 1976. Another sale-deed of the acquired land has been registered on 4th March, 1981 in favour of Kashmir Matches Factory. It is further laid down in the report that WAPDA itself surrendered the land in village Khokhar, Gheelay, Kalas and Dhal Mehmood through letters dated 2nd April, 1974 and 9th December, 1997. The physical possession as reported by the commission is entered in the revenue record in the ownership of the Azad Government through WAPDA but actual physical possession lies with the appellants. Previously, the land

surrendered by the WAPDA has been transferred through sale-deeds. It is further laid down in the report that WAPDA has taken the stance that the safety limit of the Dam extends up to 2500 feet. It is further laid down that the refugees have also been settled in some places in the land of WAPDA. It is concluded in the report that the land which has been surrendered by the WAPDA and allotted to different persons is situated near to the Dam wall as compared to the land for which the appellants have applied for de-awarding. The thrust is that the Dam safety limit extends up to 2500 feet from the Dam wall and after raising the Dam to the extent of 1242 ft, it will be determined that the land is spare or not. The argument of the counsel for respondent No.1 that WAPDA wants raising of Mangla Dam for the third time is proved to be falsified from the statement submitted by the Chief Engineer Mangla WAPDA. He categorically stated that after raising the level of Mangla Dam up to 1242 feet, the seepage and safety factors will be

checked, however, there is no approved scheme of WAPDA for raising of Mangla Dam for the third time. Mere verbal statement cannot be admitted. The Supreme Court of Pakistan in a case reported as *Province of Punjab through Collector, Lahore and another vs. Saeed Ahmad and 4 others* (PLD 1993 SC 455) observed that if a land is acquired for a public purpose and after utilizing the same some land remains surplus, the Government is at liberty to utilize it for any other public purpose provided the said public purpose is proved from some officially approved scheme. It was observed in para 12 as under:-

> "12. The above statement is contrary to the above averment in the written statement made in para 4. Additionally, no material was brought on record to indicate that there was factually any sanctioned Scheme for which the suit land was to be utilized. Sh. Abdul Majid, learned counsel for the appellants, has also submitted that there is no prohibition in law for the Government to utilize the acquired land for any public purpose other than the public purpose for which the same is acquired. Reliance has been placed by him on the case of Secretary of State v. Amulya Charan Banerjee and others (AIR 1927 Calcutta 874). There seems to be no prohibition in law for

> the Government to utilize land for any other public purpose than for which originally it was intended, so long as the action is bona fide. But in the present case, as pointed out hereinabove, the appellants failed to demonstrate that they in fact needed the suit land for any other Scheme duly approved by the competent authority."

In the case reported as *Sajida Maqsood vs. Azad Government through its Chief Secretary, having his office at Civil Secretariat, Muzaffarabad and others* (2013 SCR 461), this Court observed as under:-

> "…It may be observed that when the land of an owner is acquired for a public purpose and after fulfilling the said public purpose, some land is left unutilized, the Government is at liberty to utilize it for another public purpose and if the other public purpose is not proved from any scheme approved by the Government, then the land is to be de-awarded in favour of the original owner or his legal heirs. In a recent judgment of this Court delivered in the case reported as Ghulam Rasool & another vs. Said Ahmed & others [PLJ 2012 SC (AJ&K) 204), it was observed as under:--
>
> > '10. The reading of hereinabove reproduced rules reveals that once the land is acquired by the Government for public purpose or for company or industry it cannot be utilized against the public interest or for the individual's

benefit. The first condition is that the acquired land can only be used for the purpose it is acquired. The land can be acquired under the Land Acquisition Act, whereas there is no provision empowering the Government to acquire land for any individual's personal interest or benefit. The other condition is that even if the land is acquired for a company, the company cannot sell the same without express approval of the Government. This condition also is laid down with spirit that public interest is supreme. The Government will have to watch the interest of public. The third condition is that if at all, the acquired property is not required for the public purpose or for the purpose for which it is acquired, the same shall be resumed and restored to the original owners or their heirs from whom it was acquired and if there is no such eventuality, the land shall be utilized or disposed of by the Board of Government regarding disposal of the land. Thus, the scheme and spirit of these rules ultimately also is in consonance of the constitutional provision as expressed under the provision of Section 52(A) of the Interim Constitution Act, 1974, which means that without any express and specific legislation no one is empowered to transfer the Government land to any person in an arbitrary manner.'

The proposition cam under the consideration of the Supreme Court of

Pakistan in the case reported as Province of Punjab through Collector Lahore & another vs. Saeed Ahmed & 4 others [PLD 1993 SC 455], wherein it was observed in para 12 as under:-

> 'The above statement is contrary to the above averment in the written statement made in para 4. Additionally, no material was brought on record to indicate that there was factually any sanctioned scheme for which the suit land was to be utilized. Sh. Abdul Majid, learned counsel for the appellants, has also submitted that there is no prohibition in law for the Government to utilize the acquired land for any public purpose other than the public purpose for which the same is acquired. Reliance has been placed by him on the case of Secretary of State v. Amulya Charan Banerjee and others (AIR 1927 Calcutta 874). There seems to be no prohibition in law for the Government to utilize land for any other purpose that for which originally it was intended, so long as the action is bona fide. But in the present case, as pointed out hereinabove, the appellants failed to demonstrate that they in fact needed the suit land for any other Scheme duly approved by the competent authority.'

12. Only a land owner from whom the land was acquired or his legal heirs have a right to apply for de-awarding the land if after fulfilling the purpose for which it was acquired, some land is left unutilized. No other

> person can apply for de-awarding the same."

Thus from the record, the respondents failed to prove that the possession of the land was ever taken from the land owners. The land all along remained in the possession of the land owners. It is neither utilized by the WAPDA for the purpose it was acquired, nor WAPDA has proved that there is any other approved scheme for utilization of the said land. The appellants have a right to be treated in the like manner at par with those persons in favour of whom the land has been de-awarded. It is worth mentioning that during the pendency of appeal in this Court, WAPDA issued a notification on 18th January, 2016, which is reproduced as under:-

"NOTIFICATION

> Dam Safety Limit for Raised Mangla Dam was determined as 2500 ft from the toe of dam by the Dam Safety Experts/consultants. It has to re-determined after thee cycles of successful impounding and completion of re-settlement works upto the entire satisfaction of stakeholders. WAPDA has originally acquired land upto 1210 Ft. SPD in 1962-1967 and further

upto 1250 ft. SPD during 2003-2009 for the specific purpose of MDRP for Reservoir Filling. The Dam Safety principles need to be adhered in letter and spirit.

To avoid the after effects of upcoming impounding, the unutilized land has been kept reserved for specific purpose of monitoring and surveillance through the instruments installed/buried in the said land around the periphery of dam within the Dam safety limit i.e. piezometers, seepage wells, boils, damages according to international standards.

Henceforth, all the previous NOCs approved by the office of GM/PD MDO, Chief Engineer MDO, RE(Civil) MDO or any subordinate office for award and de-award of land are hereby withdrawn. Dam Safety Limit shall be re-determined upon final survey of land upto EI. 1250 Ft SPD on upstream and downstream of Mangla Reservoir Area (Punjab & AJK) on the basis of technical, safety, environmental and socio-economic aspects of the Dam Area. The Collector Revenue office, Commissioner MDA and Divisional Commissioner Mirpur (AK) are advised to revoke the order for Award and De-award of Land cases ab-initio at the earliest till further order and mutate in the name of WAPDA in the best interest of Authority's work. The same principle is applicable in respect of all the embankments within Dam Safety Limit around the reservoir periphery as well as small town which shall be curbed sternly.

This issues with the instruction of GM/PD MDO Mangla.

Resident Engineer (Civil)
MDO, WAPDA, Mangla."

In the said notification the Collector Revenue Office, Commissioner Mangla Dam and Divisional Commissioner Mirpur are advised to revoke the order for award and de-award of land cases ab-initio at the earliest till further order and mutate in the name of WAPDA in the best interest of Authority's work. From the letter it is evident that the notification has been issued during the pendency of appeal in this Court. No bona-fide appears in issuance of such notification because at one side the Chief Engineer WAPDA itself surrendered the land to the authorities for de-awarding in favour of the previous owners and the land was also allotted/sold to different persons, who were not even owners of the land and the hotels, the mills, the petrol stations and marriage halls have been constructed over such land, which are adjacent to the Dam wall as is evident from the report submitted by the commission appointed by this Court. The appellants have a right to be treated fairly and justly in the like manner as

the cases of other people have been treated. It was observed in an unreported judgment titled *Abdul Majeed and others vs. Azad Jammu & Kashmir Government and others* (Civil Appeal No. 252 of 2014, decided on 7.4.2016) as under:-

> "8. Therefore, subject to observations made hereinabove, if the land is not required for public purpose then the appellants being the land-owners of the acquired property, under the constitutional right No.15, are entitled for equal treatment as the Government has dealt with other land-owners while de-awarding and releasing the land in their favour. The appellants should also be dealt with in same manner and discriminatory treatment is condemned."

The case of the appellants is at par with that of the other persons whose land has been de-awarded.

7. The result of the above discussion is that the appeal to the extent of notification dated 1st September, 2011 is accepted. The notification is set aside. The respondents are directed to consider the case of the appellants at par with the cases of other land owners whose land has been de-awarded. It is further directed that

respondent No.1, WAPDA, shall consider the case of the appellants by making spot inspection of the land of the appellants and the land which has been de-awarded/allotted, in presence of the appellants.

No order as to costs.

CHIEF JUSTICE JUDGE

Muzaffarabad.
__.2.2017.

Date of announcement: 22/02/2017