

SUPREME COURT OF AZAD JAMMU & KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, CJ.
Ghulam Mustafa Mughal, J.

Civil Appeal No.193 of 2016
(PLA filed 1.8.2016)

Muhammad Farooq s/o Muhammad Iqbal r/o Ballah, Tehsil & District
Mirpur.

.... APPELLANT

versus

1. Collector Land Acquisition Mangla Dam Rising Project, Mirpur.
2. WAPDA through Chief Engineer/Project Director, Mangla Dam Rising Project, Mirpur.
3. Azad Government through its Chief Secretary, Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the High Court,
dated 31.5.2016 in Civil Appeal No.614 of 2009]

FOR THE APPELLANT: Mr. Arshad Mehmood Malik,
advocate.

FOR THE RESPONDENTS: Raja Saadat Ali Kiani, Additional
Advocate-General & Haji Ch.
Muhammad Afzal, advocate.

Date of hearing: 17.4.2017

JUDGMENT:

Ghulam Mustafa Mughal, J.—This appeal by leave of
the Court has been directed against the judgment and decree

passed by the High Court on 23.11.2016, whereby an appeal filed by the appellant, herein, has been dismissed.

2. Precise facts for disposal of the case as claimed are that the land comprising Khewat No.442, Khaata No.1893, measuring 18 kanal, 15 marla, situate in village Kalyal Bainsi, Tehsil Mirpur, was acquired by the Collector Land Acquisition for Mangla Dam Raising Project. Feeling aggrieved from the compensation amount determined by the Collector, the appellant filed a reference before the Reference Judge claiming therein that the market value of the acquired land is not less than Rs.50,00,000/- per kanal and the Collector has determined the compensation arbitrarily, without taking into consideration the potential value of the land, which can be used for the residential as well as commercial purposes. The reference was contested by the respondents. After necessary proceedings the learned Reference Judge enhanced the compensation from Rs.100,000/- to Rs.1,10,000/- per kanal vide judgment dated 31.3.2009. The appellant, herein, was not satisfied from the aforesaid enhancement, so he challenged the legality and correctness of the same by filing an appeal before the High Court. A learned single judge in the High Court, vide impugned judgment dated 31.5.2016, has dismissed the appeal.

3. Mr. Arshad Mehmood Malik, advocate, counsel for the

appellant, vehemently argued that the Collector Land Acquisition has not considered the potential, residential and commercial value of the land while determining the market value. He argued that the compensation determined by him is arbitrary and against the provisions of the Land Acquisition Act as well as the parameters laid down by this Court in various pronouncements. The learned counsel contended that even the documentary evidence produced before the Reference Judge has not been appreciated by him. The learned counsel argued that the attention of the learned High Court was also invited to the misreading and non-reading of evidence and the case-law, relied upon by the appellant before the Reference Judge, but the learned High Court also didn't consider the same. The learned counsel argued that the compensation of land should have been fixed @ Rs.50,00,000/- per kanal, which is its market value. The learned counsel in this regard relied upon the evidence/sale-deeds produced before the Reference Judge. In support of his submissions, the learned counsel placed reliance on the following cases:-

1. *Malik Muhammad Youasf & 4 others v/s Azad Govt. & 6 others* [2015 SCR 712],
2. *Azad Govt. & 2 others v/s Sahibzada Muhammad Dawood Shah & 3 others* [1999 SCR 381],
3. *WAPDA & 2 others v/s Farooq Shahid & 10 others* [2016 SCR 1730],
4. *Mst. Fazal Noor Begum v/s Muhammad Akbar & 4 others*

[1997 SCR 57],

5. *WAPDA through Chief Engineer, Mangla Dam Raising Project, WAPDA, Mangla & another v/s Sardar Asif Ayub Khan & another* [2013 SCR 673],
6. *Marwat Khan & 4 others v/s Collector Land Acquisition, Mangla Dam Raising Project, Zone-I, Mirpur & 2 others* [2013 SCR 1224],
7. (Civil Appeal No.99/2013, decided on 30.1.2015), and
8. Civil Appeal No.239/2014, decided on 22.7.2016).

The learned counsel further argued that the Collector Land Acquisition has not even considered the average price, which could be calculated on the basis of sale-deeds, relied upon by the appellant. The Reference Judge as well as the first appellate Court also failed to consider these documents, submitted the learned counsel.

4. Conversely, Raja Saadat Ali Kiani, Additional Advocate-General and Haji Ch. Muhammad Afzal, advocate, appearing for the respondents, contended that out of the acquired land, the land measuring 18 kanal is *gher mumkin*. The Collector Land Acquisition has rightly determined the compensation as Rs.100,000/- per kanal and sound reasons have been given by him for his order, recorded after visiting the spot. The learned counsel submitted that in the light of reasons listed by the Collector, no further enhancement was justified but even then the Reference Judge has enhanced the amount reasonably to the tune of Rs.1,10,000/- per kanal. The

learned counsel contended that out of the aforesaid land, two kanal land situates in *aabadi* and the compensation of the same was determined by the Reference Judge as Rs.500,000/- per kanal, hence further enhancement was not justified. The learned counsel argued that the High Court in para 6 of the judgment has wisely discussed the evidence and conclusion reached at by the High Court is unexceptional, which hardly requires any interference by this Court.

5. We have heard the learned advocates for the parties and gone through the record as well as the case-law referred to and relied upon by the counsel for the appellant.

6. A perusal of the award drawn on 10.9.2007 reveals that the notification under section 4 of the Land Acquisition Act was issued on 15.7.2005, whereas the award has been returned after a period of two years on 10.9.2007. The Collector has determined the compensation of acquired land as Rs.100,000/- per kanal vis-à-vis to the claim of the appellant i.e. Rs.500,000/- per kanal. In support of his claim, the appellant has produced the statement of Javed Iqbal, Pervaiz Iqbal, *Patwari*, Muhammad Nazeer, Naib-Tehsildar and Abdul Jabbar, as witnesses. He has himself appeared as witness in support of his claim. Besides the oral evidence, he has relied upon the documents Annexure "PH", "PA-PC", "PBB" and "PC", copies of

jamabandi. The learned Reference Judge after recording the evidence of the parties, has determined the compensation of the land on which residential house of the appellant, herein, was built as Rs.500,000/- per kanal besides the compulsory acquisition charges. We have considered the record in the light of evidence and are of the opinion that enhancement of the compensation by the Reference Judge is reasonable and justified. The Reference Judge has also enhanced the compensation of *gher mumkin* land to the tune of Rs.110,000/- from Rs.100,000/- per kanal.

8. The contention of the learned counsel for the appellant that the evidence has been overlooked by the Reference Judge, is devoid of any force, however, we have noticed that the Collector has himself determined the average price of *banjar qadeem* as Rs.1,25,000/- per kanal, as is evident from page 4 of the award. As the land has been acquired for Mangla Dam Raising Project, therefore, the determination of price keeping in view its kind, is not more material. We are of the view that the ends of justice would be served, if the compensation for the remaining land either *gher mumkin* is enhanced from Rs.1,10,000/- to Rs.1,25,000/- per kanal. We accordingly order.

Upshot of the above is that the appeal is accepted, the impugned judgment passed by the High Court on 31.5.2016 is

vacated and the order passed by the Reference Judge is modified in the terms indicated above.

JUDGE

CHIEF JUSTICE

Mirpur

Date of Announcement: 20.04.2017