

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

**Ch. Muhammad Ibrahim Zia, C.J.**

**Ghulam Mustafa Mughal, J.**

Civil Appeal No.93 of 2018

(Filed on 24.05.2018)

1. WAPDA through its Director Legal, WAPDA, WAPDA House Lahore.
2. Superintending Engineer Resettlement, Mangla Dam Raising Project, WAPDA, through Director Legal WAPDA, WAPDA House Lahore.
3. Chief Engineer, Mangla Dam Raising Project, WAPDA, through Director Legal WAPDA, WAPDA House Lahore.

....APPELLANTS

**VERSUS**

1. Ghulam Farooq s/o Muhammad Latif,
2. Muhammad Maroof s/o Muhammad Latif,
3. Abdul Razzaq s/o Muhammad Din,
4. Khalida,
5. Asif, son,
6. Abdul Razzaq,
7. Abdul Ghafoor s/o Muhammad Siddique,
8. Allah Ditta s/o Ali Shan, r/o Mera Chandra, village Thothal, Tehsil and District Mirpur.

.....RESPONDENTS

9. Collector Land Acquisition, Mangla Dam Raising Project, Mirpur.

10. Azad Government of the State of Jammu & Kashmir through its Chief Secretary having his office at New Secretariat, Muzaffarabad.
11. Commissioner, Mangla Dam Raising Project, Mirpur.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment and decree of the High Court dated 21.03.2018 in Civil Appeal No.324 of 2010]

FOR THE APPELLANTS: Mr. Javaid Najam us  
Saqib, Advocate.

FOR THE RESPONDENTS: Mr. Arshad Mehmood  
Mallick, Advocate.

*Date of hearing:* 19.11.2018.

**JUDGMENT:**

**Ghulam Mustafa Mughal, J.**— The titled appeal has been filed against the judgment and decree dated 21.03.2018, passed by the Azad Jammu & Kashmir High Court in Civil Appeal No.324 of 2010.

2. The precise facts forming the background of the captioned appeal are that the Collector Land Acquisition, Mangla Dam Raising Project, acquired the land with houses built upon the same belonging to the

respondents, herein, situated in village Thothal, Tehsil and District Mirpur, vide award No.287/2009, drawn on 01.04.2009, for upraising of Mangla Dam. The Collector Land Acquisition assessed the compensation of the acquired houses bearing code Nos.M-699B, M-120, M-146, M-697B and M-140, to the tune of Rs.5,80,002/-, 6,30,191/-, 25,21,340/-, 8,63,860/- and 9,83,325/-, respectively. Feeling aggrieved from the said determination of the compensation by the Collector, the landowners filed reference before the learned Reference Judge, Mangla Dam Raising Project, Mirpur on 27.10.2009. It was averred in the reference that the Collector has determined the compensation of the houses arbitrarily, whereas, fact of the matter is that the market value of the property is much more than that what has been assessed by the Collector. It was stated that the cost evaluation by private contractor and other evidence brought on the record has not been considered by the learned Collector. It was further stated that the oral as well as documentary evidence has not been rebutted by

the other side but this important aspect of the case has not been taken into account by the learned Collector. The reference was contested by the other side by filing objections, whereby, the claim of the landowners was refuted and it was submitted that the compensation assessed by the learned Collector is justified in all respects. The learned Reference Judge, framed issues in light of the pleadings of the parties and asked them to lead evidence in support of their respective claims. At conclusion of the proceedings, the learned Reference Judge Mirpur vide judgment and decree dated 24.06.2010, accepted the reference and enhanced the compensation amount to the tune of Rs.104400/-, 113434/-, 176999/-, 453841 and 85663/-, respectively, along with 15% Compulsory Acquisition Charges. Feeling dissatisfied from the judgment and decree passed by the learned Reference Judge Mirpur, the landowners/respondents, herein, filed appeal before the Azad Jammu & Kashmir High Court for further enhancement in the compensation. The learned High

Court after hearing the parties, through the impugned judgment and decree dated 21.03.2018, accepted the appeal in the terms that the landowners are entitled to receive compensation of their property at flat rate of Rs.1000/- per square foot.

3. Mr. Javaid Najam-us-Saqiab, the learned Advocate appearing for the petitioners argued that different houses were acquired by the Collector Land Acquisition for upraising of Mangla Dam and the compensation of the houses was properly assessed after having regard of their market value and escalation etc. but the learned Reference Judge has enhanced the compensation arbitrarily. The learned Advocate further argued that feeling aggrieved from the judgment and decree of the learned Reference Judge, the respondents, herein, went in appeal before the Azad Jammu & Kashmir High Court and the learned High Court has also enhanced the compensation on flat rates without considering the evidence as well as nature of the material utilized for construction of the houses by the landowners.

The learned Advocate further argued that enhancement in the compensation on flat rates, until and unless it is proved that all the acquired houses are similar, have been constructed by using almost the same material and there covered area is also the same, cannot be ordered. He further argued that in this case, the judgment passed by the learned High Court is arbitrary, erroneous and illegal, hence, the same may be set aside. The learned Advocate submitted that awarding compensation on flat rates can be ordered in the case where the landowners are placed in equal position and this fact is proved from the evidence. The learned Advocate further submitted that the learned High Court has not discussed the evidence in support of the impugned judgment and reasons listed in the same are alien.

4. Conversely, Mr. Arshad Mehmood Mallick, the learned Advocate appearing for the other side has defended the impugned judgment and submitted that the enhancement in the compensation on flat rates does not

make any difference, however, other cases on the same points have been remanded to the learned High Court.

5. We have heard the learned counsel for the parties and have gone through the record of the case. A perusal of the record reveals that houses bearing Nos.M-699B, M-120, M-146, M-697B and M-140, belonging to the respondents, herein, were acquired by the Collector Mangla Dam Raising Project, vide award No.287/2009, drawn on 01.04.2009. The compensation was assessed by the Collector to the tune of Rs.5,80,002/-, 6,30,191/-, 25,21,340/-, 8,63,860/- and 9,83,325/-, respectively. On reference, the learned Reference Judge enhanced the compensation to the tune of Rs.104400/-, 113434/-, 176999/-, 453841 and 85663/-, respectively and on further appeal before the High Court, the compensation was fixed at flat rates of Rs.1000/- per sq. ft. The learned High Court has determined the compensation on flat rates without taking into consideration the nature of construction, the covered area and the material used for construction. We are of the view that in the case in hand,

the compensation could not be fixed on flat rates without considering the above aspects. As the appeal has not been decided by the learned High Court while referring the evidence, therefore, we are constrained to accept this appeal and vacate the impugned judgment passed by the learned High Court. Accordingly ordered. Resultantly, the appeal filed before the High Court would be deemed pending and the High Court shall hear and decide the appeal in accordance with law on the basis of available evidence.

This appeal stands decided in the terms indicated above.

Mirpur.  
20.11.2018

**CHIEF JUSTICE**

**JUDGE**