

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

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

1. Civil Appeal No. 182 of 2018  
(Filed on 30.8.2018)

Ch. Ayaz Ahmed s/o Ch. Allah Ditta r/o House  
No. 3/B Sector F/1, Mirpur.

.... APPELLANT

**VERSUS**

1. Collector Land Acquisition, Mangla Dam Raising Project, Mirpur.
2. WAPDA through Chief Engineer Raising Project Director Mangla Mirpur.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated  
2.7.2018 in Civil Appeal No. 150 of 2007)

FOR THE APPELLANT: Mr. Muhammad Reaz Alam,  
Advocate.

FOR THE RESPONDENTS: Mr. Javaid Najam-us-Saqib,  
Advocate.

2. Civil Appeal No. 196 of 2018  
(Filed on 11.9. 2018)

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

Mirpur AK, through Director Legal WAPDA,  
WAPDA House Lahore.

.... APPELLANTS

**VERSUS**

1. Ch. Ayyaz Ahmed s/o Ch. Alla Ditta r/o  
House No.3-B, Sector F-1, Mirpur.

..... RESPONDENT

2. Collector Land Acquisition, Mangla Dam  
Raising project, Mirpur.

..... PROFORMA RESPONDENT

(On appeal from the judgment of the High Court dated  
2.7.2018 in Civil Appeal No. 150 of 2007)

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

FOR THE RESPONDENTS: Mr. Muhammad Reaz Alam,  
Advocate.

*Date of hearing:* 22.1.2019.

**JUDGMENT:**

***Ghulam Mustafa Mughal, J—*** The captioned appeals arise out of the judgment dated 2.7.2018 passed by the Azad Jammu & Kashmir High Court in civil appeal No. 150 of 2007. As both the appeals are outcome of one and the same judgment and involve common question of law and facts, hence, were heard together and are decided as such.

2. The precise facts forming the background of the captioned appeals are that Ch. Ayyaz Ahmed, appellant, herein, filed a reference application before the Reference Judge, Mangla Dam Upraising Project, Mirpur on 18.9.2006 alleging therein that the Collector Land Acquisition, Mangla Dam Upraising Project awarded Plot No. 127 situated in Sector F/3-iv owned by the appellant, herein, vide award No. 20/2006 dated 12.8.2006. It was averred that the compensation of the said plot was fixed as Rs.34,50,000/- arbitrarily without taking into consideration its location and market value. It was further averred that the minimum price of the said plot comes to Rs.1,20,00,000/- according to market price prevailing at the moment, but while determining the compensation of the plot as mentioned above the Collector Land Acquisiotn has treated the appellant, herein, in an unjust manner. It was prayed by the appellant-petitioner that by accepting the reference the compensation of the

plot in question may be fixed as Rs.1,20,00,000/- besides the compulsory acquisition charges. The reference was contested by the respondents by filing objections, whereby they refuted the claim of the petitioner-appellant. The learned Reference Judge in light of the respective pleadings of parties framed issues and directed them to lead evidence pro and contra. At the conclusion of the proceedings vide judgment and decree dated 25.8.2007 the learned Reference Judge decreed the reference in terms that the appellant, herein, is entitled to recover an additional compensation from the respondent No.1 in sum of Rs.2,00,000/- along with 15% compulsory acquisition charges in addition to its total price Rs.34,50,000/- vide judgment and decree dated 25.8.2007. Feeling dissatisfied from the said judgment and decree of the Reference Judge the appellant, herein, filed an appeal before the Azad Jammu & Kashmir High Court on 2.7.2018. The learned High Court after hearing the parties has

accepted the appeal and determined the compensation of Plot No. 127 as Rs.50,00,000/- along with 15% compulsory acquisition charges vide impugned judgment and decree dated 2.7.2018. The appellant, herein, is still not satisfied and has filed the instant appeal for further enhancement in the compensation. WAPDA has also filed appeal No. 196 of 2018 for setting aside the judgment dated 25.8.2007 passed by the Reference Judge as well the learned High Court dated 2.7.2018 on the ground that the Collector Land Acquisition has determined the compensation of the plot in dispute correctly keeping in view its location, market value and nature under section 23 of the Land Acquisition Act.

3. Mr. Muhammad Reaz Alam, the learned Advocate appearing for Ch. Ayaz Ahmed, appellant, herein, argued that plot No. 127 situated in sector F/3 part IV was acquired by the respondents and its price has been fixed as Rs.34,50,000/- including the compulsory

acquisition charges. He argued that the plot in question was located on the main Kotli road and while acquiring the same, the Collector has determined its compensation arbitrarily by ignoring the commercial as well potential value of the plot. The learned Advocate argued that even the learned Reference Judge as well as the learned High Court has not appreciated the evidence produced by the appellant, herein, regarding the commercial and market value of the land i.e. Exh. "PA", "PB", "PC" and "PD". The learned Advocate submitted that the respondents have not led any evidence vis-à-vis to the appellant and his evidence and stand remained un-rebutted but even then the Reference Judge as well as the learned High Court has not determined fair compensation of the residential plot of the appellant and he has been deprived of his valuable rights.

4. Mr. Javaid Najam-us-Saqib, the learned Advocate appearing for the respondents has controverted the arguments and submitted

that the Collector has visited the spot and thereafter while considering the location of the plot, in paragraph No.5 of the Award has categorically observed about the location, nature and value of the plot, hence, it cannot be said that the plot in question was liable to be acquired on higher price vis-à-vis to the price determined by the Collector Land Acquisition. The learned Advocate argued that all the transfer orders referred to and relied upon by the appellant in support of his reference were not relevant for consideration and determination of the compensation because those have been issued after issue of the notification under section 4 of the Land Acquisition Act. The learned Advocate argued that these documents could not be considered as per settled law but even then the learned High Court has erroneously and arbitrarily enhanced the compensation. The learned Advocate argued that onus to prove the market value of the land was on the land owner, who was duty bound to prove

the same through cogent and the compensation cannot be enhanced on the basis of surmises and conjectures or verbal statement of the witnesses. He prayed for vacation of the judgment of the High Court while accepting the appeal filed by WAPDA.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. Through Award No. 20/2006 dated 12.8.2006, besides the others, plot No. 127 belonging to the appellant, herein, was acquired by the official respondents. The compensation of the plot was determined by the Collector Land Acquisition as Rs.34,50,000/-. The appellant being dissatisfied from determination of the compensation filed a reference before the Reference Judge Mangla Dam Upraising Project on 18.9.2006. The reference was contested by the respondents and at the conclusion of the proceedings, the learned Reference Judge vide judgment and decree dated 25.8.2007 enhanced the compensation to the

tune of Rs.2,30,000/- in addition to total price amounting to Rs.34,50,000/-. The appellant, herein, further assailed the judgment and decree recorded by the Reference Judge by way of appeal before the Azad Jammu & Kashmir High Court. As stated above, the High Court while enhancing the compensation has fixed the same to the tune of Rs.50,00,000/- along with 15% compulsory acquisition charges. In order to prove his claim the appellant, herein, has relied upon the transfer orders annexed as Exh. "PF". Through this transfer order plot No. 63, which was a corner plot situated in the same sector was transferred in lieu of Rs.79,00,000/- on 23.66.2006. Through transfer order marked as Exh. "PG" plot No. 97 was transferred for Rs. 70,00,000/- on 21<sup>st</sup> June, 2006. Through transfer order Exh. "PH" plot No. 103 was transferred on 26<sup>th</sup> May, 2006 for Rs.80,00,000/-. It is pertinent to mention here that all these plots have been transferred after the issue of notification under section 4 of the

Land Acquisition Act, which in the case in hand, was issued on 20.7.2005. However, as the award was issued on 12.8.2006, therefore, these documents can be relied upon for assessment of the compensation being nearest in time. The learned High Court while enhancing the compensation in its judgment has relied upon the judgment dated 13.4.2013 of this Court rendered in a case titled *WAPDA vs. Sardar Asif and others*. The learned High Court has held that admittedly the plot in question is situated on the road side, hence, no one can deny from its potential and commercial value. The learned High Court while enhancing the compensation has placed reliance on a case titled *Mst .Musarat Allah Ditta vs. Collector and another* decided on 24.1.2018 that this plot was situated in the same line and is of same category. The compensation of the said plot has been fixed by this Court to the tune of Rs.50,00,000/- along with 15% compulsory acquisition charges, therefore, the learned High Court has rightly

enhanced the compensation while basing its judgment on the aforesaid case.

6. The contention of Mr. Muhammad Reaz Alam, the learned Advocate appearing for the appellant that the appellant was entitled to at least Rs.1,20,00,000/- as has been proved by him through transfer orders as well as by producing the vendor and the vendee, is not tenable. In view of the observation of the Collector stated in paragraph No. 5 of the Award, we are unable to accept this argument of the learned counsel for the appellant. We are of the view that the compensation awarded by the learned High Court will meet the ends of justice and the same is approved.

7. So far as the contention of Mr. Javaid Najam-us-Saqib, the learned Advocate appearing for the respondents that the learned High Court has arbitrarily fixed the compensation, is devoid of any force. The learned High Court has given valid and sound reasons for enhancement of the compensation and supported his view by the

dictum of this Court given in similar circumstances.

The upshot of the above discussion is that finding no force in these appeals, the same are hereby dismissed with no order as to costs.

JUDGE

CHIEF JUSTICE

Mirpur.  
23.1.2019.

Ch. Ayaz Ahmed vs. Collector Land Acquisiotn &  
another  
WAPDA & others vs. Ch. Ayaz Ahmed & another

**ORDER:**

Judgment has been signed. It shall be announced by the Additional Registrar after notice to the learned counsel for the parties. A copy of the judgment shall be placed on the connected file.

CHIEF JUSTICE

JUDGE

Mirpur.  
23.1.2019.