

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

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.  
Raja Saeed Akram Khan, J.

1. Civil Appeal No.126 of 2018  
(Filed on 11.07.2018)

Ch. Mumtaz Hussain, S/o Ch. Karam Dad, R/o  
Panyam Chaksawari Tehsil and District Mirpur.

.....APPELLANT

**VERSUS**

1. Azad Government of the State of Jammu and Kashmir through its Chief Secretary Muzaffarabad.
2. WAPDA, through Project Director/Chief Engineer Mangla Mirpur.
3. Collector Land Acquisition Mangla Dam Zone I, Mirpur.

.....RESPONDENTS

[On appeal from the judgment & decree of the High Court  
dated 12.05.2018 in Civil Appeal No.155/2012]

FOR THE APPELLANT: Mr. Muhammad Siddique  
Chaudhary, Advocate.

FOR THE WAPDA: Mr. Javed Najam-us-Saqib,  
Advocate.

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2. Civil Appeal No.160 of 2018  
(Filed on 15.08.2018)

1. WAPDA through Director Legal WAPDA,  
WAPDA House Lahore,
2. Superintending Engineer Resettlement, Mangla  
Dam Raising Project, Mangla, Mirpur AK,  
through Director Legal WAPDA, WAPDA House  
Lahore,
3. Chief Engineer, Mangla Dam Raising Project,  
Mangla, Mirpur, A.K, through Director legal  
WAPDA, WAPDA House Lahore.

.....APPELLANTS

**VERSUS**

1. Ch. Mumtaz Hussain, S/o Ch. Karam Dad, R/o  
Panyam Chakswari, Tehsil and District, Mirpur.

...RESPONDENT

2. The Collector Land Acquisition Mangla Dam  
Raising Project, Zone-I, Mirpur.
3. Azad Govt. through its Chief Secretary,  
Muzaffarabad.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment & decree of the High Court  
dated 12.05.2018 in Civil Appeal No.155/2012]

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

FOR RESPONDENT No.1: Mr. Muhammad Siddique  
Chaudhary, Advocate.

Date of hearing: 21.01.2019.

**JUDGMENT:**

Raja Saeed Akram Khan, J.- Through the titled appeals, the validity of the judgment and decree of the learned High Court dated 12.05.2018 has been challenged, through which the appeal filed by the appellant, Ch. Mumtaz Hussain, has been accepted and the compensation of the acquired property has been enhanced.

2. Necessary facts for disposal of the instant appeals are that the Collector Land Acquisition acquired many built-up properties situate in village Panyam, Tehsil and District Mirpur for raising of Mangla Dam vide Award No.1050/2011, issued on

26.01.2011. The Collector Land Acquisition determined the compensation of the house owned by Ch. Mumtaz Hussain, appellant, herein, bearing Code No.CPM-290 in the tune of Rs.69,45,926/-. Feeling aggrieved from the compensation assessed by the Collector Land Acquisition, the appellant, Ch. Mumtaz Hussain, filed a reference under section 18 of the Land Acquisition Act, 1894, before the learned Reference Judge Mangla Dam Raising Project Mirpur, for enhancement in the compensation amount of the awarded house on 14.04.2011. He claimed that the Collector determined a very meager price of the acquired house, whereas the market value of the awarded house is approximately Rs.1,50,00,000/-. On filing the reference, the respondents, appellants in the counter appeal, were summoned, who filed their objections, whereby the claim of the appellant, Ch. Mumtaz Hussain, was refuted in toto and requested for dismissal of the reference application. The learned Reference Judge after necessary proceedings, vide judgment and decree

dated 21.03.2012, answered the reference in affirmative and enhanced the additional compensation amount of the acquired house bearing Code No.CPM-290, to the tune of Rs.10,41,889/- along with 15% compulsory acquisition charges. The appellant (owner of the house) approached the High Court by filing an appeal for further enhancement in the compensation amount. The learned High Court after necessary proceedings, through the impugned judgment dated 12.05.2018, while accepting the appeal determined the compensation as Rs.88,89,120/- along with 15% compulsory acquisition charges. Against the judgment and decree of the learned High Court both the parties have filed the titled appeals. As both the appeals arise out of the common/single judgment of the learned High Court, therefore, the disposal of the same through the proposed judgment is felt advised.

3. Mr. Muhammad Siddique Chaudhary, Advocate, counsel for the appellant/owner of the house, submitted that the impugned judgment is

based on non-appreciation of the record and the evidence produced by the appellant/owner of the house. He added that un-rebutted documentary evidence i.e. Exh. PB, the report of the architect, who while making the building survey of the awarded house of the appellant proposed that the market value of the said house is Rs.1,54,59,340/- but both the Courts below have not appreciated this important piece of evidence in its true perspective. He further submitted that the appellant in support of the documentary evidence also produced the oral evidence. The respondents failed to bring any sort of evidence in rebuttal. In this scenario, the proper course was to enhance the compensation as claimed by the appellant but very meager amount has been enhanced by both the Courts below, which does not meet the ends of justice. He requested for acceptance of appeal filed by the appellant/owner of the house and dismissal of the counter appeal filed by WAPDA.

4. Conversely, Mr. Javed Najam-us-Saqib, Advocate, counsel for the respondents/appellants in the cross appeal, while opposing the arguments of the counsel for the appellant (owner of the house) submitted that the evidence on which the appellant/owner of the house has relied heavily, cannot be made basis for enhancement in the compensation as the person who submitted the alleged report was not the architect by profession, as has been deposed by him in his Court statement, therefore, the determination/enhancement of the compensation on the strength of said report was not justified. The learned High Court as well as the Reference Judge failed to consider this aspect of the case. He further submitted that admittedly the built-up property of the appellant/owner of the house was old one, whereas the assessment has been made keeping in view the rates of newly constructed building, which is against the spirit of law. He requested for dismissal of appeal

of the owner and acceptance of the appeal filed by WAPDA.

5. We have heard the arguments of the learned counsel for the parties and gone through the impugned judgment along with the other material made available on record. The main thrust of the arguments of the counsel for both the parties is regarding the report of the building expert i.e. Tariq Ali Dutt, Architect. The counsel for the appellant/owner of the house, claimed that the said architect in its report clearly mentioned that the market value of the acquired house is Rs.1,54,59,430/- but the Courts below have not taken into account this important piece of evidence which is unrebutted and has enhanced a very meager amount. The counsel for the appellant/WAPDA, claimed that the learned High Court has enhanced the compensation on the basis of report of a private person who is not even an architect by profession. In this context we have perused the record. The record shows that except Exh.PB, the

report of Architect, no other documentary evidence is available on record, from which the correct market value of the awarded house can be ascertained. However, the oral evidence on behalf of the owner of the house has been produced, which fully supported the market value of the house shown in the report Exh. PB. In this state of affairs, the learned High Court has adopted the proper course while taking into account the report Exh.PB as well as the oral evidence, as on the other hand the appellants (WAPDA & others) have not brought on record even an iota of evidence to justify the compensation determined by the Collector. The learned High Court has enhanced the reasonable amount and the further enhancement keeping in view the material available on record is not justified. During the course of arguments on a query made by the Court to Mr. Muhammad Siddique Chaudhary, Advocate, counsel for the appellant/owner of the house, that admittedly the house of the appellant/owner was old one, whereas the assessment has been made by the

architect at the rates of newly constructed building, how the further enhancement is justified, he failed to satisfy the Court.

6. Thus, keeping in view the peculiar facts of the case, we are of the view that the learned High Court has rightly appreciated the material brought on record and reasonable compensation has been enhanced. As the Courts below have already enhanced 60% of the claimed, therefore, further enhancement is not justified.

Resultantly, finding no force both the appeals stand dismissed with no order as to costs.

**JUDGE**

**CHIEF JUSTICE**

Mirpur.  
.....01.2019.