

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.33 of 2018
(Filed on 06.01.2018)

Inhabitants of Village Khambal through Abdul Kareem
s/o Saif Ali, caste Jatt, r/o Village Khambal, Tehsil and
District Kotli.

....APPELLANT

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir
through its Chief Secretary AJK, Muzaffarabad.
2. WAPDA through its Chairman WAPDA, WAPDA
House Lahore.
3. Chairman WAPDA Lahore, WAPDA House
Lahore.
4. Chief Engineer WAPDA, Mangla, Tehsil and
District Mirpur.
5. Resident Engineer (Civil), WAPDA, Mangla,
Mirpur.
6. Project Director, Mangla (Resettlement),
Organization, WAPDA, Tehsil and District Mirpur.
7. Superintendent Engineer, Upraising Project,
Mangla, Tehsil and District Mirpur.
8. Commissioner Mangla Dam Affairs, Mirpur, Azad
Kashmir.
9. Collector Land Acquisition, Mangla Dam Affairs,
Mirpur, A.K.

10. Assistant Collector Mangla Dam Affairs, Mirpur, A.K.
11. Tehsildar, Mangla Dam Affairs, Mirpur.
12. MDA through Chairman MDA, Mirpur.
13. Director General, MDA, Mirpur.
14. Chairman Mirpur Development Authority, Mirpur.
15. Estate Officer, Mirpur Development Authority, Mirpur.
16. Allotment Committee, Mirpur Development Authority, Mirpur.
17. Office Encroachment, MDA, Mirpur.
18. Secretary Mirpur Development Authority, Mirpur.
19. Board of Revenue AJK through its Secretary, Muzaffarabad.
20. Commissioner Revenue Department Mirpur Division, Mirpur.
21. Deputy Commissioner Mirpur/Collector District Mirpur.
22. Revenue Department through its District Collector Mirpur.
23. Assistant Commissioner, Mirpur, Azad Kashmir.
24. Tehsildar Mirpur, Azad Kashmir.
25. Gardawar, Circle Mirpur, Azad Kashmir.
26. Patwari Halqa, village Khambal, Mirpur, Azad Kashmir.
27. Public at large.

.....RESPONDENTS

[On appeal from the Judgment of the High Court dated
26.10.2017 in Writ Petition No.193 of 2016]

FOR THE APPELLANT: Sh. Masood Iqbal,
Advocate.

FOR THE RESPONDENT: Ch. Munsif Dad, Advocate.

Date of hearing: 24.01.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J.— The titled appeal with our leave has been filed against the judgment dated 26.10.2017, passed by the Azad Jammu & Kashmir High Court in Writ Petition No.193 of 2016.

2. The precise facts forming the background of the captioned appeal are that the appellants, herein, filed a writ petition before the Azad Jammu & Kashmir High Court on 28.04.2016, stating therein, that for the purpose of upraising the Mangla Dam level, the land upto 1210 ft. was initially required by WAPA, however, by taking precautionary measures the land upto 1270 ft. level was acquired by WAPDA which was awarded in its favour through award

No.10/CII/60, drawn on 03.02.1960. It was alleged that WAPDA had paid the compensation of whole acquired land to the Government of Azad Jammu & Kashmir but the Government paid compensation to the landowners only to the extent of 1210 ft. level pertaining to the land comprising survey Nos.1 to 10, 10 to 23/1, 27 to 303, 311 to 313, 316, 318, 320, 321, 323, 324, 328, 363 and 384. It was averred that the compensation of the remaining land between 1210 to 1270 ft. was neither given to the landowners nor the said land has been de-awarded. It was further submitted that the appellants, herein, filed an application to the Worthy Prime Minister which was marked to the Collector Mangla Dam Raising Project, Mirpur, but the Collector without any legal justification rejected the same vide order dated 07.12.2015. It was prayed that while accepting the writ petition, the order dated 07.12.2015, may be set aside. The writ petition was contested by the other side

by filing written statement, wherein, it was pleaded that the writ petition is hit by the principle of *res judicata*. It was stated that the writ petition has been filed on question of fact which can only be resolved after recording the evidence of the parties, hence, is not maintainable. It was alleged that the inhabitants of village Khambal, severally and jointly filed different suits, writ petitions as well as appeals before different Courts and most of them have been dismissed, hence, the writ petition has been filed with unclean hands just to waist the precious time of the Court which may be dismissed with cost. The learned High Court after hearing the parties through the impugned judgment dated 26.10.2010, has dismissed the writ petition in limine.

3. Sh. Masood Iqbal, the learned Advocate appearing for the appellants, while referring to the letter dated 21.07.1968, argued with vehemence that the land acquired vide award dated 03.02.1960 for

upraising the level of Mangla Dam up to 1210 ft. was utilized by WAPDA, whereas, the land falling between 1210 to 1270 ft. was not utilized and vide letter dated 21.07.1968, the Collector Land Acquisition was asked by the WAPDA to de-notify the land which has not been utilized by WAPDA. The learned Advocate further argued that this was the reason for which the land remained in possession of the landowners and they have not received the compensation determined by the Collector in pursuance of the award dated 03.02.1960. The learned Advocate further argued that the landowners remained in impression that the said land has been de-awarded. He added that now when the land has been acquired for further upraising of the Mangla Dam, therefore, the appellants, herein, are entitled to the compensation at the present commercial value after fresh award. He added that neither WAPA nor the Collector can deprive the appellants, herein, from fair compensation

of the land. The learned Advocate further argued that the Collector has rejected the application of the appellants, herein, for payment of the compensation at the present market value of the acquired land vide order dated 07.12.2015 which was challenged separately through writ petition before the Azad Jammu & Kashmir High Court but the learned High Court dismissed the same on wrong assumption of fact. The learned Advocate submitted that the one of the reasons listed for rejection of the said application was that the son and daughter of one of the appellants, herein, were a party to the earlier writ petition, whereas, fact of the matter is that the appellant is issueless and has no son or daughter. The learned Advocate further submitted that there was no alternate remedy for resolution of the question of fact, therefore, the learned High Court was duty bound to admit the writ petition for regular hearing.

4. Conversely, Ch. Munsif Dad, the learned Advocate appearing for the other side argued that the appeal is time barred because the judgment of the High Court was announced on 26.10.2017, soon after hearing the arguments and the Advocate representing the appellants, herein, before the High Court was also present but even then this appeal has been filed after a considerable delay, hence, was liable to be dismissed on this ground without attending its merits. The learned Advocate further argued that earlier same like writ petition has been dismissed by the learned High Court and the judgment was maintained by this Court, therefore, the learned High Court has rightly held that the writ petition is not maintainable on the ground of *res judicata*. The learned Advocate further argued that even otherwise the writ petition was liable to be dismissed on account of laches. The learned Advocate submitted that as the land was acquired in 1960 and mere non-receipt of the compensation by the

appellants does not furnish a ground for de-award of the land or payment of the compensation on the prevalent market rates.

5. We have heard the learned counsel for the parties and have gone through the record of the case. Firstly, we would like to resolve the objection raised by Ch. Munsif Dad, Advocate, regarding the limitation. A perusal of the record reveals that the impugned judgment was announced on 26.10.2017 when the arguments were heard. No order is recorded by the learned High Court on the original file that the judgment is dictated and announced, therefore, it cannot be said that announcement of the judgment by the learned High Court was in the knowledge of the learned Advocate representing the appellants before the High Court. The appellants themselves as well as the learned Advocate who was representing them before the High Court have filed affidavit in this regard and no counter affidavit has been filed from the

other side, therefore, we are of the view that the appeal is within limitation from the date of knowledge. Accordingly held.

6. It may be stated here that some important questions of law are involved in this case; like, as to whether, the land was not utilized by the WAPDA as it has requested for de-award of the same vide letter dated 21.07.1968, written by the Project Director Mangla Resettlement Organization WAPDA, Mirpur to the Collector Land Acquisition and what was the effect of this letter are serious questions which were liable to be resolved after admission of the writ petition. Similarly, the question, as to whether, the Collector Land Acquisition was justified to reject the application regarding payment of the compensation at the present market after fresh award was also liable to be resolved. The question regarding maintainability of the writ petition before the High Court was also liable to be seen after its admission. Thus, proper course for

the learned High Court was to admit the writ petition for regular hearing and decide the same on merits even after recording the evidence of the parties, if so required.

In view of the above, the impugned judgment dated 26.10.2017, being illegal, is hereby set aside. The writ petition No.193/2016 filed by the appellants, herein, before the High Court is admitted for regular hearing. The learned High Court shall now proceed further in accordance with law.

Mirpur.
28.01.2019

JUDGE

JII

JUDGE

JI