

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

1. Civil Appeal No. 162 of 2018
(Filed on 20.8.2018)

1. Liaqat Ali s/o Muhammad Zaman,
2. Muhammad Bashir,
3. Muhammad Nazir s/o Kalu Khan,
4. Auraangzeb Qasim s/o Qasim Ali caste Jatt
r/o Dhari Dhamial, Tehsil and District
Mirpur.

.... APPELLANTS

VERSUS

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

..... RESPONDENTS

(On appeal from the judgment of the High Court dated
25.6.2018 in Civil Appeal No. 502 of 2009)

FOR THE APPELLANTS: Mr. Khalid Ghazi, Advocate.

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

2. Civil Appeal No. 202 of 2018
(Filed on 14.9.2018)

1. WAPDA through Director Legal WAPDA, WAPDA House, Lahore.
2. Superintendent 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 AK, through Director Legal WAPDA, WAPDA House, Lahore.

.... APPELLANTS

VERSUS

1. Liaqat Ali s/o Muhammad Zaman,
2. Muhammad Bashir,
3. Muhammad Nazir s/o Kalu Khan,
4. Qasim Ali deceased, represented by:-
Aurangzaib Qasim s/o Qasim Ali caste Jatt,
r/o vilagae Dhamini, Tehsil and District
Mirpur.

..... RESPONDENTS

5. Collector Land Acquisiotn, Mangla Dam Raising Project Mirpur.

....PROFORMA RESPONDENT

(On appeal from the judgment of the High Court dated
25.6.2018 in Civil Appeal No. 502 of 2009)

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

FOR THE RESPONDENTS: Mr. Khalid Ghazi, Advocate.

Date of hearing: 18.2.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeals arise out of the judgment dated 25.6.2018 passed by the Azad Jammu & Kashmir High Court in civil appeal No. 502 of 2009. 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 the landed property measuring 19 kanal 15 marla situated in village Dhari Dhamial belonging to the appellants, herein, in appeal No. 162 of 2018 was awarded vide award No. 105/07 dated 20.7.2007 for upraising of Mangla Dam. The notification under section 4 of the Land Acquisiotn Act, was issued on 1.11.2005. The Collector has determined the compensation of the acquired land for its kind *Maira Awal* as Rs.4,50,000/- and for its kind *Maira Doem* as Rs.3,50,000/- per kanal. The appellants, herein, felt aggrieved from the determination of the

compensation fixed by the Collecrr, filed a reference before the Reference Judge on 3.5.2008. It was claimed by them that the Collector in para No.3 of the award has admitted that some land has been sold in the same village through sale-deed but has not considered the same for the purpose of determination of the compensation. It was stated that the sale-deed pertaining to the adjacent village was considered by the Collector but even then the compensation has not been awarded according to market value of the land of that village. It was further stated by the appellants, herein, in their reference application that the market and potential value of the acquired land has not been considered by the Collector at all. They prayed for enhancement of the compensation to the tune of Rs. 30,00,000/- per kanal. The reference was contested by the other side. At the conclusion of the proceedings, the learned Reference Judge vide judgment and decree dated 2.12.2008 enhanced the compensation to the tune of

Rs.4,90,000/- for its kind *Maira Awal* and Rs.3,80,000/- for its kind *Maira Doem* per kanal along with 15% compulsory acquisition charges. Feeling aggrieved from the judgment and decree passed by the learned Reference Judge, the land owners filed an appeal before the Azad Jammu & Kashmir High Court on 2.3.2009. The learned High Court vide impugned judgment and decree dated 25.6.2018 has declared the appellants, herein, entitled to receive Rs.5,40,000/- per kanal for *Maira Awal* and Rs. 4,30,000/- per kanal for *Maira Doem* along with 15% compulsory acquisition charges. The Appellants are not still satisfied from the determination of the compensation and they have prayed for further enhancement through the captioned appeal. A cross appeal has been filed by WAPDA on the ground that the Courts below have enhanced the compensation without any justification and evidence. It is stated in the appeal that the reason listed by the Collector with regard to fixation of the compensation was

self explanatory and sound, which warrants no interference.

3. Mr. Khalil Ghazi, the learned Advocate appearing for the land owners argued with vehemence that the Collector has determined the compensation of the acquired land arbitrarily as he has not considered the sale-deeds of village Dhari Damial which were listed by him in para 3 of the award. The learned Advocate argued that these sale-deeds were produced in evidence before the learned Reference Judge as Exh. "PF", "PG" and "PH". The learned Advocate further argued that according to these sale-deeds the market value of the land is more than Rs.14,0000/- per kanal but the Collector has not given the same. The learned Advocate argued that even the sale-deeds of the adjacent village have not been considered by the Collector through which the market value of the land comes to Rs.14,00,000/- per kanal. The learned Advocate submitted that the oral evidence was also led by

the appellants and it was proved that the land is located at the road side and can be utilized for commercial purpose in future. He submitted that this aspect of the case has neither been considered by the Reference Judge nor by the learned High Court, hence, the judgments of the Courts below are arbitrary, capricious and against the record. The learned Advocate while relying upon the case reported as 2013 SCR 973 argued that this Court has already given the compensation according to sale-deeds of the relevant village.

4. Mr. Javed Najam-us-Saqib, the learned Advocate appearing for WAPDA and others in the counter appeal has submitted that the Collector has given the sound reasons for determination of the compensation in the award and enhancement made by the learned Reference Judge as well as the High Court is without any evidence on the record. He argued that compensation cannot be enhanced unless the similarity of the acquired land with the land

whose compensation has been enhanced by the Court is proved through cogent evidence. The learned Advocate argued that the onus of proving the market and commercial nature of the land is on the land owners and if there is no evidence or no amount is claimed from the Collector at the time of the award, they cannot make any claim afterward and have to accept the amount determined by the Collector.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. It may be stated that the Collector in para 3 of the award has admitted that a sale-deed pertaining to village Dhari Dhamial has been effected on 7.6.2005 before the date of issuance of notification under section 4 of the Land Acquisition Act. Through this sale-deed, 2 kanal land has been sold out for Rs.5,00,000/- per kanal. The Collector has not considered this document without any reason. The sale-deed from the adjacent village i.e. Dhari Phali dated 27.11.2004, whereby 3 kanal land

has been sold out for Rs.4,00,000/- and the other sale-deed dated 24.5.2005, whereby 1 kanal 14 marla land has been sold for Rs.28,00,000/-. The Collector has admitted that average price of these sale-deeds comes to Rs.40,00,000/- but has not considered the same for determination of the compensation. The Advocate representing the land owners has failed to satisfy the Court that any piece of evidence is led regarding the proper location of the acquired land. A bare statement that a road is passing through the acquired land is not sufficient to compare with those pieces of land for which higher compensation has been awarded by the Collector or enhanced by this Court. Unless, a comparison is made or proved through evidence, the benefit of the judgment referred to and relied upon by the learned Advocate for the appellants cannot be given. However, in view of the admission of the Collector and the other circumstances of the case, we are inclined to hold that the appellants,

herein, are entitled to receive Rs.6,00,000/- per kanal besides the compulsory acquisition charges irrespective of its kind.

6. The upshot of the above discussion is that appeal No. 162 of 2018 filed by Liaqat Ali and others is accepted in the terms indicated above, whereas, the counter appeal filed by WAPDA is dismissed for having no substance in it.

JUDGE

CHIEF JUSTICE

Mirpur.
19.2.2019.

Liaqat Ali & others vs. Collector Land Acquisition
& another
WAPDA & others vs. Liaqat Ali & others.

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 file of the connected case.

CHIEF JUSTICE

JUDGE

Mirpur.
19.2.2019.