SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No. 205 of 2018
(Filed on 18.9.2018)

1. Parveen Akhtar, widow,
2. Javed Hussain,
3. Shahid Hussain,
4. Tahir Hussain,
5. Zahid Hussain, sons,
6. Hegat Yasmeen,
7. Nuzat Yasmeen,
8. Neelum Yasmin, daughters of Mohammad Hussain,
9. Muhammad Ramzan,
10. Merban Hussain s/o Nawab Din,
11. Ruqiya Bi, widow,
12. Javed Iqbal,
13. Muhammad Merban,
14. Muhammad Shahban,
15. Orangzaib, sons,
16. Nasreen Bi,
17. Qaisar Bibi d/o Muhammad Alam,
18. Allahditta,
19. Matloob Hussain s/o Fazal Elahi, deceased,
20. Muhammad Idrees,
21. Allah Ditta (sons) Muhammad Sadiq,
22. Shair Alam,
23. Muhammad Bashir sons of Manga,
24. Muhammad Shafique,
25. Muhammad Atiq, sons,
26. Naseem Akhtar,
27. Shamim Akhtar d/o Muhammad Siddique, deceased.
28. Rehmat Bi d/o Nawab Din,
29. Muhammad Amin, son,
30. Shamim Akhtar,

31. Rehmat Bi d/o Sarwari,
32. Rehmat Bi d/o Rabia, caste Jatt, r/o Blah, Tehsil and District Mirpur.

.... APPELLANTS

VERSUS

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

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 23.7.2018 in Reference Appeal No. 247 of 2010)

FOR THE APPELLANTS: Mr. Muhammad Siddique Chaudhry, Advocate.

FOR THE RESPONDENTS: Mirza Zaidullha, Advocate.

Date of hearing: 20.2.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal arises out of the judgment dated 23.7.2018 passed by the Azad Jammu & Kashmir High Court in appeal No. 247 of 2010.

2. The facts necessary for disposal of the captioned appeal are that the landed property of the appellants, herein, measuring 20 kanal 15 marla, situated in village Ballah District Mirpur

was acquired by the respondents vide award No. 46/2006 for Mangal Dam Raising Project. The Collector Land Acqusiotn has determined the compensation of the said land to the tune of Rs.5,25,000/- and Rs.1,50,000/- for its kind *Mera Awal* and *Banger Qadeem* respectively. The appellants, herein, felt aggrieved from the determination of the compensation by the Collector Land Acqusiotn filed a reference before the Reference Judge Mirpur for further enhancement of the compensation. It was stated by them that the acquired land is situated within Municipal limits and its market value is not less than one Crore per kanal but the Collector has determined a meager amount of compensation of the acquired land. The learned Reference Judge in light of the respective pleadings of the parties framed issues and directed them to lead evidence pro and contra. At the conclusion of the proceedings, the learned Reference Judge vide judgment and decree dated 15.3.2010 partly accepted the reference and

enhanced the compensation to the tune of Rs.1,00,000/- per kanal. Feeling dissatisfied from the judgment and decree passed by the learned Reference Judge the appellants, land owners, went in appeal before the Azad Jammu & Kashmir High Court. The learned Advocate after hearing the parties through the impugned judgment and decree dated 23.7.2018 has accepted the appeal and while modifying the judgment and decree passed by the Reference Judge declared the appellants entitled to compensation of the awarded land to the tune of Rs.7,25,000/- per kanal for its kind *Maria Awal* and Rs.3,50,000/- for its kind *Banger Qadeem* along with 15% compulsory acquisition charges. The appellants, herein, are still not satisfied with the enhancement of the compensation and filed the captioned appeal for further enhancement of the compensation.

3. Mr. Muhammad Siddique Chaudhry, the learned Advocate appearing for the appellants argued with vehemence that the

Reference Judge as well as the learned High Court has not considered the documentary evidence produced by the appellants and no reason has been listed for its rejection, hence, the impugned judgment is not sustainable in the eye of law. The learned Advocate argued that the sale-deed Exh. “PG” was executed on 7.6.2000, whereas the notification under section 4 of the Land Acqusiotn Act was issued on 27.1.2005, hence, this sale-deed was very much relevant and was liable to be considered. He submitted that through this sale-deed 11 marla land was transferred for Rs.15,42,000/- in 2000 and the acquired land which is located in the Municipal area has been acquired through award No.46/06 on 28.12.2006, hence, the market value of the land stood proved through documentary evidence but the same has been ignored illegally by the Reference Judge and has also not been considered by the learned High Court in its true perspective. The learned Advocate argued that the other important evidence was the

notification dated 31.12.2002 issued by the Collector/Deputy Commissioner District Mirpur under section 27-A of the Stamps Act, 1899, whereby the market value of the land was listed as Rs.1,10,000/- per marla. The learned Advocate argued that the transfer orders Exh. “P”, “PK”, “PL”, “PM”, “PN”, “PO”, “PQ”, “PR” “PS” and the sale-deeds Exh. “PH” dated 11.6.2005 and “PI” dated 4.2.2006 have been ignored illegally. The learned Advocate argued that it was proved from the award as well as the evidence that no sale-deed has been effected in village Blah and the sales effected in the adjacent village namely Bhurkey have been considered by the Collector and the compensation of all the land acquired in village Blah has been enhanced by the High Court as well as by this Court irrespective of its kind. He submitted that as the award was the same and the evidence was also of the like nature, therefore, the appellants, herein, cannot be discriminated by the Collector as well as by the Courts below while adopting

the different standard for awarding the compensation of the acquired land. In support of his submissions the learned Advocate has placed reliance on an unreported judgment of this Court titled as *WAPDA vs. Muhammad Sharif and others* (Civil Appeal No. 140 of 2017). In this case, the High Court has awarded Rs. 23,98,000/- per kanal irrespective of the kind of the land, which was maintained by this Court. The learned Advocate has further relied upon a case titled *WAPDA and others vs. Muhammad Ramzan and others* (Civil Appeal No. 123 of 2017 decided on 30.11.2017).

4. Conversely, Mirza Zaidullah, the learned Advocate appearing for the respondents argued that no any evidence is led by the appellants or mentioned by the witnesses produced by them that the acquired land is of the same category and is equal to the land mentioned in the cited cases, hence, its compensation was liable to be enhanced. The learned Advocate argued that until and unless a

comparison is not made through the evidence and the similarity, potential and commercial value of the land is proved, the equivalence cannot be claimed in compensation because the price and the land differ from place to place. He submitted that although the acquired land is within the Municipal limit but on spot it is located near the Dam, which is neither potential in nature nor can be utilized for any commercial purpose. The learned Advocate argued that the valuation table alone is not sufficient evidence for enhancement of compensation. The parties have to succeed at the strength of evidence produce by them. In support of his contentions the learned Advocate has placed reliance on the case reported as 2016 SCR 1730. The learned Advocate submitted that reasonable enhancement has already been made by the High Court, therefore, further enhancement is not justified.

5. We have heard the learned Advocates representing the parties and have gone through

the recode of the case. The acquired land is situated in village Blah, which is admittedly located in the Municipal limits. The notification under section 4 of the Land Acqusiotn Act was issued on 27.1.2005, whereas award No. 46/06 was issued on 28.12.2006. The Collector has awarded the compensation of the acquired land to the tune of Rs. 5,25,000/- for its kind *Mara Awal* and Rs.2,50,000/- for its kind *Banger Qadeem*. The learned Reference Judge after recording the evidence through judgment and decree dated 15.3.2010 enhanced the compensation to the tune of Rs.1,00,000/- for both the categories of the land. Same like increase in the compensation has been made by the learned High Court. The contention of Mr. Muhammad Siddique Chaudhry, the learned Advocate for the appellants that Exh. "PG" and notification dated 27.1.2005 have not been considered by the Courts below in its true perspective, has a substance. Through Exh. "PG", 11 marla land has been transferred in

2000 for Rs. 15,42,000/-, whereas vide notification dated 27.1.2005 the Collector has himself fixed the valuation of the land as Rs.1,10,000/- per marla in village Bhurkey/Blah. It is correct that in various cases, it has been observed by this Court that valuation table alone is not sufficient for determination of the compensation but it can be taken into consideration along with the other evidence. Therefore, it was proper for the Courts below to judge the question of enhancement in the compensation while considering Exh. "PG" along with the notification dated 27.1.2005. It is also not denied that no sale-deed has been effected from village Blah and in all the cases, the Collector has relied upon the sale-deeds effected in village Bhurkey, the adjacent village. It is also not denied that this Court has enhanced the compensation in various cases.

6. After considering the oral as well as documentary evidence and overall circumstances of the case in hand, we are of the

view that the Courts below have not properly appreciated the evidence and the conclusion reached by them is not satisfactory. It is correct that no comparison with the acquired land has been made but the compensation in the same award has been enhanced by this Court, therefore, we deem it proper to enhance the compensation further to the tune of Rs.12,00,000/- per kanal along with 15% compulsory acquisition charges irrespective of the kind of the land.

The upshot of the above is that the appeal is accepted and the impugned judgment of the High Court and that of the Reference Judge stands modified in the terms indicated above.

JUDGE CHIEF JUSTICE.

Mirpur.
21.2.2019.