

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No. 279 of 2018
(Filed on 15.12.2018)

WAPDA through legal Advisor WAPDA/Director
(Legal) WAPDA, WAPDA House Lahore
(Authorized).

.... APPELLANT

VERSUS

1. Muhammad Afzal s/o Ditta, caste Jatt, r/o
Amb Tehsil Dadyal, District Mirpur.

..... RESPONDENT

2. Collector Land Acquisition, Raising Project,
Dam Zone –II, Mirpur, Azad Kashmir.

3. Azad Govt. of the State of Jammu &
Kashmir through its Chief Secretary,
Muzaffarabad.

4. Superintending Engineer Raising Project
Mangla Dam Mirpur.

5. Chief Engineer Mangla Dam Raising
Project, Mirpur.

.... PROFORMA RESPONDENTS.

(On appeal from the judgment of the High Court dated
18.10.2018 in Civil Appeal No. 208 of 2010)

FOR THE APPELLANT: Ch. Liaqat Afzal, Advocate.

FOR THE RESPONDENTS: Ex-parte.

Date of hearing: 20.3.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal arise out of the judgment dated 18.10.2018 passed by the Azad Jammu & Kashmir High Court in civil appeal No. 208 of 2010.

2. The precise facts forming the background of the captioned appeal are that Muhammad Afzal, respondent No.1, herein, filed a reference application before the Reference Judge, Mangla Dam Raising Project on 17.6.2009 alleging therein that his landed property measuring 16 kanal 7 marla, Khata No. 701-699, Khewet No. 91, comprising Khasra Nos. 1862, 1952, 1916, 1889, 1887, 1881 and 1879 situated in village Anb, Tehsil Dudyal was acquired by the Collector Land Acquisition for upraising of Mangla Dam vide award No. 55/2008 dated 26.6.2008. It was alleged that the compensation of the acquired land was determined @ Rs.5,00,000/- per kanal without taking into consideration its market value and without any notice to the petitioner-respondent

No.1, herein. It was further alleged that the acquired land is located at the road side and falls within the limits of Municipal Committee and could be utilized for commercial purpose, but this factor has not been considered by the Collector while issuing the award. It was averred that the Collector himself has admitted in paragraph No.3 of the award that the average price of the acquired land comes to more than Rs.18,000,00/- on the basis of the sale-deeds, but has fixed a nominal compensation of the acquired land. It was claimed that the land of the petitioner has been acquired for commercial purpose, hence, its compensation should also have been fixed as such. The petitioner lastly prayed that the compensation of the acquired land may be determined as Rs.50,000,00/- per kanal. The Reference was contested by the respondents by filing objections, wherein they refuted the claim of the petitioner. The learned Reference Judge framed issues in light of the pleadings of the parties and directed them to

lead evidence pro and contra. At the conclusion of the proceedings, the learned Reference Judge vide judgment and decree dated 8.2.2010 decreed the reference in the terms that the petitioner is entitled to receive the compensation of the acquired land @ Rs.6,60,000/- per kanal for its kind *Hael*, Rs.5,50,000/- per kanal for its kind *Maira Awal* and Rs.6,60,000/- per kanal for its kind *Ghair Mumkin Abadi* along with 15% compulsory acquisition charges. Feeling aggrieved from the said judgment of the Reference Judge, respondent No.1, herein, filed an appeal before the Azad Jammu & Kashmir High Court on 7.5.2010. The learned High Court vide impugned judgment and decree dated 18.10.2018 has accepted the appeal and modified the judgment and decree of the Reference Judge in the terms that the appellant-land-owner is entitled to receive the compensation of the acquired land to the tune of Rs.18,18,182/- per kanal irrespective of its kind along with 15% compulsory acquisition

charges. Against the said judgment and decree of the learned High Court, the appellant, herein, has approached this Court through the captioned appeal.

3. Ch. Liaquat Afzal, the learned Advocate appearing for the appellant argued that the judgment passed by the learned High Court is arbitrary and capricious, hence, is liable to be reversed for the reason that enhancement has been made by the learned High Court in the compensation on the basis of the sale-deed dated 3.2.2005, which was rejected by the Collector for the genuine reasons. The learned Advocate argued that the Collector has visited the spot and observed in paragraph No. 3 of the award that the land transferred vide sale-deed dated 3.2.2005 is located on the road side and can be utilized for commercial purpose vis-à-vis to the acquired land which is situated at some distance from the acquired land. The learned Advocate further argued that there was no other evidence on the basis of which it can be said

that the land sold through the said sale-deed is of similar nature and is located in the same vicinity. He argued that it is also admitted by the petitioner when appeared as witness in support of the reference that the land is located outside the Municipal limits of Dudyal and he has also received the compensation and did not file any objection at the time of acquisition proceedings, therefore, the enhancement legally could not have been made. The learned Advocate further argued that besides appellant, Muhammad Rafique and Muhammad Afzal sons of Ch. Abdul Raheem also appeared as witness, but their statements have not been considered by the learned High Court while making the enhancement. He argued that enhancement cannot be ordered on the basis of surmises and conjecturer rather the compensation can be enhanced on the basis of cogent evidence. In support of his submission, the learned Advocate has placed reliance on following cases:-

1. *Khanma Bi & others vs. The Collector Land Acquisition & another* (Civil Appeal No. 8 of 2018, decided on 24.4.2018).
2. *Kaneez Bi vs. Azad Government & others* (Civil Appeal No. 107 of 2015, decided on 16.6.2017).
3. *Mehta Ravindrarai Ajitrai (deceased by L.Rs,) and others vs. State of Gujrat* (AIR 1989 Supreme Court 2051).
4. We have heard the learned Advocate representing the appellant and have gone through the record of the case. In view of the proposed conclusion, we would not like to discuss the case law as well as the points argued at the bar. We are of the prima-facie view that the Collector has discarded the sale-deed dated 3.2.2005 for genuine reasons, on the basis of which the learned High Court has enhanced the compensation. The learned High Court has discusses the oral evidence led in support of the

reference. Similarly, an important question has not been considered by the learned High Court that respondent No.1, herein, has not filed any objection or demanded any compensation from the Collector. Normally respondent No.1, herein, is not entitled to claim the compensation beyond, which has been fixed by the Collector. This fact has not been considered by the learned High Court. This aspect of the matter has also not been considered by the learned High Court. A judicial order should be well reasoned and speaking one while referring to the evidence of the parties and the case law referred to, if any. Proving the market value of the acquired land is the basic responsibility of the land owners and if no convincing evidence is led, then enhancement could not be justified. Reference can be made to the case reported as *Hyderabad Development Authority through M.D., Civic Centre, Hyderabad vs. Abdul Majeed and others* (PLD 2002 Supreme Court 84). The apex Court of Pakistan has highlighted the characteristic of a valid

judgment. In paragraph No. 5 of the report, it was observed as under:-

“5. We have painfully noted lacuna pointed out in the judgment by the learned counsel for the appellant. However, we believe that such omission has occurred inadvertently because perusal of the judgment reveals that besides noting arguments advanced by both the sides, the evidence has also been reproduced precisely, as such there was no impediment for the learned Judge in discussing the evidence to formulate reasons for the purpose of drawing conclusion on basis of which appeals were allowed. It would be advantageous to note that judicial pronouncement (judgment) by a Judicial Officer should be based on the evidence/material available on record and reasons must be outcome of the evidence available on record and on the basis of such reasons conclusion should be drawn and if the order lacks of these ingredients it cannot be termed to be a judicial verdict (judgment) in stricto sensu and at the best such pronouncement can be

termed to be an administrative order incapable to settle controversy judicially between the parties. Confronted with such situation we were inclined to remand the case by setting aside judgment to the High Court but keeping in view protracted delay which has already taken place in the matter because parties are in litigation from 24th September, 1981, therefore, with consent of the parties' counsel we decided to dispose of the appeals on merits to save parties from another round of litigation and also to do substantial justice between them.”

In these circumstances, we are constrained to accept the appeal and set aside the impugned judgment with a direction to the High Court to decide the case afresh while considering the award as well as the evidence led by the petitioner before the Reference Judge.

JUDGE

JUDGE

Mirpur
21.3.2019.

