

SUPREME COURT OF AZAD JAMMU & KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, CJ.

Raja Saeed Akram Khan, J.

Civil Appeal No.211 of 2018

(Filed on 3.10.2018)

1. WAPDA through Director Legal WAPDA, WAPDA House, Lahore.
2. Superintendent Engineer Resettlement, Mangla Dam Raising Project, Mangla, Mirpur, AJ&K, through Director legal WAPDA, WAPDA House, Lahore.
3. Chief Engineer, Mangla Dam Raising Project, Mangla, Mirpur, AJ&K, through Director Legal WAPDA, WAPDA House, Lahore.

..... APPELLANTS

v e r s u s

1. Muhammad Baroo s/o Din Muhammad,
2. Sajid Iqbal,
3. Haroon Iqbal, sons,
4. Aqsa Bi,
5. Safeena Bi,
6. Robena Kousar, daughters,
7. Fazeelat Bi, w/o Muhammad s/o Muhammad Din, caste Jatt, r/o Panyam, Tehsil & District Mirpur.

.....RESPONDENTS

8. Collector Land Acquisition Mangla Dam Raising Project, Mirpur.

.....PROFORMA RESPONDENT

[On appeal from the judgment & decree of the High Court, Dated 10.7.2018, in Civil Appeal No.313/2008]

FOR THE APPELLANTS: Mr. Javed Najmus-Saqib,
advocate.

FOR THE RESPONDENTS: (ex-parte)

Date of hearing: 23.4.2019

JUDGMENT:

Raja Saeed Akram Khan, J.—Through the titled appeal, the validity of the judgment and decree passed by the High Court on 10.7.2018 has been called in question, whereby while accepting the appeal filed by the land-owners, respondents herein, the amount of compensation of their acquired land has been enhanced.

2. The relevant facts of the case are that through Award No.101/2007, issued on 29.6.2007, the Collector Land Acquisition Mirpur acquired the land measuring 176 *kanal* and 15 *marla*, including the land of the respondents, land-owners, situate at village Chohan Tehsil Mirpur. The Collector determined the compensation of the land in the terms mentioned herein-below:-

<u>Kind of land</u>	<u>Compensation per kanal</u>
Hael:	Rs.500,000/-
Maira Awal:	Rs.400,000/-
Maira Doem:	Rs.350,000/-
Banjar Qadeem:	Rs.150,000/-
Arraak banjar qadeem:	Rs.150,000/-
Ghair mumkin:	Rs.150,000/-
Ghair mumkin raasta:	Rs.150,000/-
<u>Ghair mumkin aabadi:</u>	<u>Rs.600,000/-</u>

Feeling dissatisfied form the amount of compensation determined and awarded by the Collector, the respondents, land-owners, filed a reference application before the Reference Judge Mirpur, stating therein that the Collector has determined a very meager compensation of their land, whereas the market value of the acquired land is not less than Rs.16,00,000/- per *kanal*. After necessary proceedings, the learned Reference Judge answered the reference in affirmative and enhanced the compensation in the following terms:-

Kind of land	Compensation amount per kanal	
	assessed by the Collector	enhanced by the Reference Judge
Hael	Rs.500,000/-	Rs.540,000/-
Maira Awal	Rs.400,000/-	Rs.430,000/-
Maira Doem	Rs.350,000/-	Rs.370,000/-
Deegar Gher mumkin	Rs.150,000/-	Rs.160,000/-
Gher mumkin aabadi	Rs.600,000/-	Rs.650,000/-

Feeling again dissatisfied, the respondents, land-owners, filed an appeal before the High Court which has been accepted through the impugned judgment

and decree while further enhancing the compensation
in the following manners:-

Kind of land	Amount of compensation per kanal		
	assessed by the Collector	enhanced by Reference Judge	enhanced by the High Court
Hael	Rs.500,000/-	Rs.540,000/-	Rs.570,000/-
Maira Awal	Rs.400,000/-	Rs.430,000/-	Rs.460,000/-
Maira Doem	Rs.350,000/-	Rs.370,000/-	Rs.400,000/-
Digar Gher mumkin	Rs.150,000/-	Rs.160,000/-	Rs.190,000/-
Gher mumkin aabadi	Rs.600,000/-	Rs.650,000/-	Rs.680,000/-

The validity of the judgment of the High Court has been called in question by the appellants, herein, through the instant appeal.

3. Mr. Javed Najmussaib, advocate, counsel for the appellants, submitted that the impugned judgment and decree passed by the High Court is against law and the record. He added that the Courts below have not appreciated the material brought on the record in a legal manner. The learned counsel added that the learned High Court has not taken into account the principle of law laid down by the superior Court for determining the market value of the acquired property. The learned counsel added that the sale-deed regarding the land measuring 8 *marla* has been made the yardstick for enhancement of the compensation by the learned High Court, without adhering to the fact that

the total acreage of the acquired land was 176 *kanal* 15 *marla*, which consists of different kinds of the land. The learned counsel added that the sale-deed which has been relied upon by the learned High Court, cannot be made yardstick because while tendering the same, the land-owners have not uttered even a single word that through the said sale-deed, which kind of land has been alienated. The superior Courts have time and again reiterated the principle that mere tendering a document is not sufficient until and unless the party proves that the nature, kind and location of the land sold through the tendered sale-deed and the acquired land is the same. The learned counsel referred to the statement of Azizur Rehman, witness, who deposed that the acquired land is not situate within the municipal limits.

4. We have heard the ex-parte arguments of the learned counsel for the appellants and gone through the impugned judgment along with the other record made available.

5. A perusal of the record reveals that the notification under section 4 of the Land Acquisition Act,

1894, was issued on 30.7.2005 and the award of the acquired land was issued on 29.6.2007. The Collector Land Acquisition in para 3 of the award has observed that no land in the village except mentioned in the sale-deed registered on 16.12.2004 has been sold during the period of one year prior to issuance of notification under section 4 of the Act, 1894. The Collector Land Acquisition himself observed that there is no prevailing practice of selling the land because the holdings of the people are very small. The financial position of the land owners is very strong and they are ready to purchase the land at any price which a vendor demands. The land owners have reserved their lands only for the residential purposes. No evidence in rebuttal has been brought on the record from the other side. The Collector Land Acquisition despite recording the above-referred findings, determined the meager amount of compensation. The enhancement made in the compensation by the Reference Judge was also not reasonable. In this way, the learned High Court, keeping in view the evidence brought on the record by the land-owners, has awarded reasonable compensation to them. It is settled principle of law that

where the lands are acquired without the consent of the land-owners under the powers of the State, the maximum benefits should have been awarded to the land-owners. Reference can be made to the case-law reported as *Chief Engineer Electricity & others vs. Rehana Kausar* [2017 SCR 915], wherein it has been observed as under:-

“.....It is well settled that while determining the compensation it is the duty of the acquiring agency to look into the usage to which the acquired land can be put in future along with other factors. It may be observed here that where the lands are not acquired with the consent of the owners rather they have been deprived of their lands under the powers of the State, the owners are entitled to get maximum possible benefits. Although, the appellant has not proved that the market value of the acquired land is Rs.5,00,000/- per marla but it has been proved that the land is precious in nature and the compensation has not been awarded to the landowner by the Collector according to the market value of the land. After the perusal of the judgment passed by the learned Reference Judge, we are of the view that the learned Reference Judge keeping in view the material available on record and the potential value of the land has rightly enhanced the compensation from Rs.90,000/- to Rs.2,50,000/- per marla and the learned High Court has not committed any illegality while upholding

the judgment and decree passed by the Reference Judge.”

Thus, it can be held that the compensation determined by the Collector Land Acquisition was not in line with the findings recorded by him while issuing the award and in derogation of the above-referred enunciation of this Court. Moreover, there is no much difference between the compensation assessed by the Collector Land Acquisition and the amount enhanced by the Courts below.

6. the argument of the counsel for the appellants that the sale-deed registered on 16.12.2004, which has been made basis for determination of compensation by the learned High Court, does not show as to what kind of land was alienated through the said sale-deed, is against the record. The Collector Land Acquisition has discussed and considered the said sale-deed while issuing the award in the following terms:-

”اس واحد بیعنامہ کے علاوہ دیگر کوئی اراضی خرید و فروخت ہونا نہیں پائی گئی۔
بیعنامہ مذکور کی رو سے ”میرا اول“ اراضی فروخت ہوئی ہے جو کہ مشتری کے
مکان سے ملحق ہونے کے بنا پر خصوصی حالات و واقعات میں خرید و فروخت
ہونا پائی گئی ہے۔ بیع شدہ اراضی محل وقوع اور پیداواری صلاحیت کے اعتبار

سے زیر حصول اراضی سے مماثلت نہیں رکھتی بلکہ سکنی غرض سے فروخت
ہونا پائی گئی۔-----"

It is clearly mentioned in the findings reproduced above that the land alienated through the sale-deed is *maira-awal* in nature. Thus, the argument advanced by the learned counsel for the appellants is repelled.

6. The next contention of the counsel for the appellants is that the Courts below have not considered the statement of one of the witnesses namely Azizur-Rehman in its true perspective who has himself admitted that the acquired land is not situate within the municipal limits. Although the said witness has stated that the acquired land is not situate within municipal limits, however, he has also stated that every enmity of life is available in the area. It may be observed here that these days, every municipal facility is available in the areas situate beyond the municipal limits. It is also a settled law that the statement of a witness cannot be taken in isolation and the statement should have been read as a whole to arrive at a conclusion. Be that as it may, the learned High Court has not determined and enhanced the compensation on the ground that the

acquired land is situate within municipal limits or not. Thus, the argument of the counsel for the appellants is not helpful to the case of the appellants.

7. It appears from the record that the appellants, herein, have not brought anything on the record to prove that the Collector determined the compensation properly keeping in view the market value of the land. As observed hereinabove, the Collector despite recording the above-referred findings, determined meager amount of compensation, therefore, the High Court was fully justified to determine and enhance the compensation on the basis of the sale-deed registered on 16.12.2004. The appellants failed to point out any misreading, non-reading or illegality in the impugned judgment, which does not call for any interference by this Court.

The result of the above discussion is that finding no force in this appeal, the same is hereby dismissed with no order as to costs.

JUDGE

CHIEF JUSTICE

Mirpur
26.4.2019