

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

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

1. Civil appeal No.248 of 2018  
(Filed on 07.11.2018)

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

.....APPELLANT

**VERSUS**

1. Muhammad Taj son of Muhammad Shafi,
2. Muhammad Rafique,
3. Muhammad Amin, sons of Nazir Hussain,
4. Muhammad Saleem son of Barkat Ali,
5. Muhammad Siddique son of Muhammad Taj,
6. Nasrin Akhtar w/o Muhammad Khursheed, r/o Sangot, Tehsil and District Mirpur.

....RESPONDENTS

7. Collector Land Acquisition, Mangla Dam Raising Project, Zone-1, Mirpur.
8. AJK Government through Chief Secretary, Muzaffarabad.

.....PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 03.09.2018 in reference appeals No.401-A and 451 of 2009)

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FOR THE APPELLANT: Ch.Liaqat Afzal,  
Advocate.

FOR THE RESPONDENTS: Raja Hassan Akhtar  
and Mr.Taimoor Ali  
Khan, Advocates.

2. Civil Appeal No.249 of 2018  
(Filed on 27.03.2018)

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

...APPELLANT

**VERSUS**

Mukhan Khan son of Faqeer Muhammad, r/o  
Fatehpur Kotli, presently village Sangot, Tehsil  
and District Mirpur.

.....RESPONDENT

(On appeal from the judgment of the High Court dated 03.09.2018 in reference appeals No.401-A and 451 of 2009)

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FOR THE APPELLANT: Ch.Liaqat Afzal,  
Advocate.

FOR THE RESPONDENT: Raja Hassan Akhtar  
and Mr.Taimoor Ali  
Khan, Advocates.

3. Civil appeal No.250 of 2018  
(Filed on 08.11.2018)

1. Muhammad Taj son of Muhammad Shafi,
2. Muhammad Rafique,
3. Muhammad Amin, sons of Nazir Hussain,
4. Muhammad Saleem son of Barkat Ali,
5. Muhammad Siddique son of Muhammad Taj,
6. Nasrin Akhtar w/o Muhammad Khursheed, r/o Sangot, Tehsil and District Mirpur.

.....APPELLANTS

**VERSUS**

1. Collector Land Acquisition Mangla Dam Raising Project, Mirpur.
2. WAPDA through its Chief Engineer WAPDA, Mangla Mirpur.
3. Azad Government of the State of Jammu and Kashmir through its Chief Secretary, Muzaffarabad.

....RESPONDENTS

(On appeal from the judgment of the High Court dated 03.09.2018 in reference appeals No.401-A and 451 of 2009)

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FOR THE APPELLANTS: Raja Hassan Akhtar  
and Mr.Taimoor Ali  
Khan, Advocates.

FOR THE RESPONDENTS: Ch.Liaqat Afzal,  
Advocate.

4. Civil Appeal No.251 of 2018  
(Filed on 08.11.2018)

Makhan Khan son of Faqeer Mohammad, caste Kashmiri, r/o Fatehpur Kotli, presently residing at village Sangot, Tehsil and District Mirpur.

.....APPELLANT

**VERSUS**

1. Collector Land Acquisition Mangla Dam Raising Project, Mirpur.
2. WAPDA through its Chief Engineer WAPDA, Mangla Mirpur.
3. Azad Government of the State of Jammu and Kashmir through its Chief Secretary, Muzaffarabad.

....RESPONDENTS

(On appeal from the judgment of the High Court dated 03.09.2018 in reference appeals No.401-A and 451 of 2009)

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FOR THE APPELLANT: Raja Hassan Akhtar  
and Mr.Taimoor Ali  
Khan, Advocates.

FOR THE RESPONDENTS: Ch.Liaqat Afzal,  
Advocate.

Date of hearing: 23.04.2019

**JUDGMENT:**

**Raja Saeed Akram Khan, J.-** The titled appeals have been directed by the contesting parties against the common judgment of the High Court dated 03.09.2018, therefore, the same are being disposed of through the proposed judgment.

2. The facts necessary for disposal of these appeals are that the Collector Land Acquisition acquired the land owned by the appellants in appeals No.250 and 251 of 2018, situate at village Sangot, Tehsil and District Mirpur for Mangla Dam Raising Project. The award was announced on 17.05.2007 in which the Collector Land Acquisition while classifying the acquired land into two kinds, i.e. *hael* and *maira awal* determined the compensation at the rate of Rs.6,00,000/- and Rs.5,00,000/- per *kanal*, respectively. Feeling dissatisfied from the compensation determined by the Collector, the landowners filed reference applications and claimed that the market value of the acquired land is not less than Rs.50,00,000/- per *kanal*, therefore, the compensation at the said rate be awarded. The learned Reference Judge after conducting necessary proceedings while partly accepting

the reference applications enhanced and fixed the compensation of the acquired land as Rs.7,00,000/- per *kanal* for the kind of land *hael* and Rs.6,00,000/- per *kanal* for the kind of land *maira awal*. The landowners again feeling dissatisfied, filed appeals before the High Court and claimed enhancement/fixation of the compensation at the rate of Rs.50,00,000/- per *kanal* irrespective of the kinds of land. The learned High Court through the impugned judgment has further enhanced the compensation in the following terms:-

“For the foregoing reasons both the appeals are partially accepted and compensation is hereby enhanced to Rs.7,00,000/- per kanal for its kind Mera Awal and Rs.8,00,000/- per kanal for its kind Hail and Ghair Mumkin Abadi alongwith 15% Compulsory Acquisition charges.”

Now the contesting parties through the captioned appeals have challenged the validity of the impugned judgment of the High Court.

3. Raja Hassain Akhtar and Mr. Taimoor Ali Khan, Advocates, the learned counsel for the appellants-landowners, submitted that the impugned judgment is against law and the facts of the case. They contended that the learned High Court while passing the impugned judgment failed to properly appreciate the evidence brought on record by the landowners as well as the relevant law on the subject. They added that the landowners by producing cogent documentary evidence, i.e. sale-deeds and valuation table and the oral evidence proved their claim, whereas, the respondents failed to bring on record anything in rebuttal, but despite that the Courts below have made a meager enhancement in the compensation which is quite against the



settled principle of administration of justice. The learned counsel submitted that the acquired land is situate within the municipal limits and could also be utilized for commercial purpose, but this aspect of the matter escaped the notice of the Courts below. In this regard, the learned counsel for the landowners drew the attention of this Court towards the findings recorded by the Collector Land Acquisition himself in the award. The learned counsel while referring to the case law reported as *Malik Muhammad Yousaf and 4 others v. Azad Govt. and 6 others* [2015 SCR 712] forcefully submitted that in the referred case, the land was also acquired through the disputed award and the evidence brought on record by the parties in both the cases are also same. In case (supra), this Court fixed the compensation at the rate of Rs.1,10,000/- per *marla* irrespective of the kinds of land,

whereas, in the matter in hand, the Courts below have not considered this aspect of the case and enhanced a very meager amount. They prayed for acceptance of appeals.

4. On the other hand, Ch. Liaqat Afzal, Advocate, while appearing on behalf of WAPDA and others submitted that the Courts below without any justification made enhancement in the compensation determined by the Collector. He added that the landowners in response to the notice issued under sections 9 and 10 of the Land Acquisition Act, 1894 filed objections in which they did not take any such plea that the compensation has not been determined properly, therefore, later on, they could not claim enhancement in the compensation on fresh ground. In this regard, the learned counsel drew the attention of this Court towards clauses XII and XXXI of the award and also referred to a judgment of this Court

delivered in the case titled *Muhammad Khan v. Azad Government and others* (civil appeal No.97 of 2013, decided on 30.01.2015). He further contended that the landowners brought on record some sale-deeds to prove their claim but failed to substantiate that the location, nature or potential value of the land sold through the sale-deeds tendered in evidence and the acquired land are the same, therefore, under law on the basis of such sale-deeds enhancement cannot be made. He further submitted that mere on the strength of valuation table, the compensation cannot be determined as this Court in a number of pronouncements has held that valuation table cannot be made sole criterion for determining the compensation. The learned counsel referred to and relied upon the judgments delivered in the cases titled *Mazhar Hussain and others v. Collector Land Acquisition and*

*others* (civil appeal No.25 of 2017, decided on 25.10.2017) and *Kaneez Bi v. Azad Government and others* (civil appeal No.107 of 2015, decided on 16.06.2017) and prayed for setting aside the impugned judgment.

5. We have heard the arguments, gone through the record made available along with the impugned judgment and also considered the case law referred to by the counsel for the parties. The perusal of the impugned judgment shows that the learned High Court considered all the evidence brought on record in detail and thereafter made enhancement in the compensation. It is indeed correct that the landowners during acquisition proceedings filed objections before the Collector and have not taken the plea that the market value of the acquired is Rs.50,00,000/- per *kanal*. Moreover, the landowners also failed to bring on record any solid evidence to substantiate

that the market value of the acquired is Rs.50,00,000/- per *kanal*. The learned counsel for the landowners before this Court mainly stressed that in the case reported as *Malik Muhammad Yousaf and 4 others v. Azad Government and 6 others* [2015 SCR 712] same award was under consideration and the evidence was almost same as is in the case in hand, wherein, this Court while relying upon the valuation table fixed the compensation as Rs.22,00,000/- per *kanal*, therefore, the landowners in the matter in hand, also deserve for the same treatment. We deem it proper to observe here that each case has its own peculiar facts and circumstance and mere on the strength of findings of facts recorded in any other case, the compensation cannot be enhanced. Although, in a number of pronouncements this Court has held that valuation table may be considered as one of

the relevant factors for determining the compensation, but in the matter in hand, as the landowners have not raised suchlike stance during the acquisition proceedings before the Collector which they have taken later on while filing reference applications; therefore, in view of the peculiar facts of the case we do not intend to make the valuation table sole criterion for determining the compensation in the instant case. In this regard, the learned counsel for the appellants-WAPDA has rightly relied upon the judgment of this Court delivered in the case titled *Muhammad Khan v. Azad Government and others* (civil appeal No.97 of 2013, decided on 30.01.2015], wherein same proposition was under consideration as the only objection by the landowner raised in that case before the Collector was that the kinds of land have not properly been assessed and later on, while

filing reference he sought enhancement in the compensation; this Court held that he cannot claim enhancement in the compensation amount on the fresh grounds. The relevant portion of the judgment is reproduced here which reads as under:-

“From the record, it reveals that the claim of the appellant regarding enhancement in the compensation negates his own version which was taken before the Collector Land Acquisition that the kind of land is hail, therefore, he cannot claim enhancement in the compensation amount on the fresh grounds.”

It is also evident from the record that the landowners while tendering the sale-deeds in evidence have not uttered even a single word; whether the location, nature and market value of the land sold through the sale-deeds, tendered in evidence, and the acquired land are the same, therefore, in view of the

principle of law enunciated by this Court in a plethora of judgments, i.e. mere tendering of sale-deeds in evidence is not sufficient until and unless the landowners substantiate that the location, nature or potential value of the land sold through sale-deed exhibited and the acquired land are the same; these sale-deeds are no more helpful to the case of the landowners. In this regard, the learned counsel for the appellant-WAPDA has rightly relied upon the unreported judgments of this Court delivered in the case titled *Mazhar Hussain and others v. Collector Land Acquisition and others* (civil appeal No.25 of 2017, decided on 25.10.2017) and *Kaneez Bi v. Azad Government and others* (civil appeal No.107 of 2015, decided on 16.06.2017).

6. We have also examined the record to appreciate the point; whether the Collector properly assessed the market value of the



acquired land or not. The findings recorded by the Collector himself in the award show that at one hand the Collector held that the acquired land is situate adjacent to Mirpur city and very precious in nature, but on the other hand, assessed the market value otherwise, even the Collector discarded some of the sale-deeds in the vicinity, executed at the relevant time, in an arbitrary manner. Thus, in such a situation, we agree with the conclusion arrived at by the Courts below that the Collector failed to assess the market value in accordance with law. Keeping in view the overall circumstances of the case and the material available on record, we are of the view that the learned High Court has not committed any illegality while making enhancement in the compensation and indulgence by this Court is not required under law.

In view of the above, finding no substance all the appeals are hereby dismissed with no order as to costs.

**JUDGE**

**JUDGE**

Mirpur,  
\_\_\_\_.04.2019