

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No. 112 of 2018
(Filed on 08.06.2018)

WAPAD through Director Legal WAPDA, WAPDA
House, Lahore.

.... APPELLANT

VERSUS

1. Masood Yaqoob,
2. Daood Yaqoob,
3. Muhammad Yaqoob, sons of Muhammad Yaqoob,
4. Sarwar Khan s/o Muhammad Lal,
5. Muhammad Ayub s/o Muhammad Iqbal
r/o Rathoa Muhammad Ali, Tehsil and
District Mirpur.

..... RESPONDENTS

6. Chief Engineer/Project Director Mangla Dam
Raising Project, Mirpur,
7. Collector Land Acquisition Mangla Dam Raising
Project, Mirpur,
8. Azad Government of the State of Jammu and
Kashmir through its Chief Secretary,
Muzaffarabad.

.....PROFORMA-RESPONDENTS

(On appeal from the judgment and decree of the
High Court dated 28.03.2018 in appeal No. 43 of
2011)

FOR THE APPELLANT: Haji Muhammad Afzal
Khan, Advocate

FOR RESPONDENTS Mr. Muhammad Khalil
NO.1 TO 5: Ghazi, Advocate.

Date of hearing: 22.04.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal is directed against the judgment and decree dated 28.03.2018 passed by the Azad Jammu and Kashmir High Court in appeal No. 43 of 2011.

2. The facts necessary for disposal of the captioned appeal are that the houses of the respondents-petitioners, herein, situated at village Rathoa Muhammad Ali Khan, Tehsil & District Mirpur were acquired for construction of Mangla Dam Raising Project vide award No. 313 of 2009 dated 13.05.2009. Feeling dissatisfied from the compensation determined by the Collector, the respondents, herein, filed separate references before the Reference Judge on

27.10.2009. It was claimed by them that while determining the compensation, the potential and market value of the houses have not been considered by the Collector, properly. It was further claimed that the proper compensation for change of the residence and hike in price have also not been awarded. The reference was contested by the defendant-appellant, herein, by filing written statement. The learned trial Court framed issues and directed the parties to lead evidence pro and contra. At the conclusion of the proceedings, the learned Reference Judge vide judgment and decree dated 24.12.2010, decreed the reference in the following manner:—

““Therefore, answering the reference a decree is issued in terms that the petitioners to the reference deserve to have an additional compensation in respect of their respective acquired houses bearing code No. M. 738, M-807B & M-738A, in sum of Rs. 92,924/-, Rs. 1,02,626/- & Rs. 1,34,127/-, situated at village Rathua Mohammad Ali Tehsil Mirpur along with CAC @ 15% & interest @ 6% on

the enhanced compensations chargeable since acquisition of the houses till its satisfaction.....”

The respondents-petitioners, herein, were not satisfied from the compensation amount enhanced by the learned Reference Judge and filed an appeal before the Azad Jammu and Kashmir High Court on 14.03.2011. The learned High Court vide judgment and decree dated 25.01.2017 further enhanced the compensation in the following manner:—

“.....Thus, keeping in view the fact of the depreciation of the prices of the constructed property when assessed in light of sections 23 & 24 of the Land Acquisition Act, 1894, this Court is persuaded to enhance the compensation amount, however, without diving into the calculation of amount, it is ordered that the above appeal merits acceptance and enhancement of the compensation amount, therefore, this Court is inclined to hold that the appellants shall be entitled to receive overall lump sum amount to the tune of Rs. 20 lac,

Rs. 12 lac and Rs. 22 lac respectively relating to their houses bearing Code Nos. M-738, M-807B and M-738 along with 15% compulsory acquisition charges and interest @ 6% per annum on the enhanced amount.”

Feeling dissatisfied from the compensation determined by the learned High Court, the respondents, herein, filed an appeal before this Court. This Court vide judgment dated 31.01.2018, while accepting the appeal set aside the judgment and decree dated 25.01.2017 passed by the learned High Court and remanded the case to the learned High Court with the direction to decide the case afresh after taking into consideration the evidence brought on record by the parties. The learned High Court vide impugned judgment and decree dated 28.03.2018 has again accepted the appeal and further enhanced the compensation in the following terms:—

“In view of above, the appeal stands accepted and in light of the evidence produced by the appellants, which

remained un-rebutted, observation recorded in 2010 SCR 47 and permanent deprivation of the appellants from their land, the appellants are declared entitled to Rs. 11,00,000/- of house No. M-738, Rs. 12,00,000/- of house No. M-807-B and Rs. 15,00,000/- of house No. M-738A, along with 15% CAC and interest @ 6% on the enhanced compensations chargeable since acquisition of the houses till its payment.”

3. Haji Muhammad Afzal, the learned Advocate appearing for the defendant-appellant, herein, argued that the proper compensation was awarded by the Collector while accepting the report of Building Replacement Cost Value (BRCV) which was consisted on the qualified engineers and experts and has determined the compensation as per policy after visiting the spot. The learned Advocate argued that the evidence brought on record by the respondents, herein, was not accepted by the Reference Judge but even then the compensation has been enhanced without there being any evidence on

record. The learned Advocate argued that the High Court has accepted the report of the private engineer who has not prepared the same at his own after assessing the proper compensation/market value of the acquired houses rather has based on different part of the report of BRCV. The learned Advocate submitted that this fact was admitted by him in his Court's statement in which he has disowned the statement/estimate prepared by him even then the learned High Court has accepted the same and unreasonably enhanced the compensation in violation of the judgment of this Court reported as *Qurban Hussain & another vs. WAPDA & 3 others* [2017 SCR 524]. He argued that in this case, it was laid down by this Court that the report of the private engineer cannot be accepted for enhancement of the compensation. The learned Advocate argued that the enhancement of the compensation by the learned High Court was not justified and supported by any evidence/reason and the

judgment is telegraphic one which has not been properly handed down even after remand by this Court. The learned Advocate further argued that the direction of this Court has not been complied with which was constitutional obligation of the High Court as is enshrined in Article 42-B of the Azad Jammu and Kashmir Interim Constitution, 1974. The learned Advocate further argued that the award of interest was against *Sharia* and was not justified at all. The learned Advocate also placed reliance on an unreported judgment of this Court titled *WAPDA vs. Sodager Hussain & others (Civil Appeal No. 89 of 2017, decided on 31.01.2018)*.

4. Conversely, Mr. Muhammad Khalil Ghazi, the learned Advocate appearing for plaintiff-respondents No. 1 to 5, herein, argued with vehemence that the notification under section 4 of the Land Acquisition Act, 1894 was issued in the present case on 06.09.2008, whereas, the award has been finalized after a year and the committee has determined the

compensation while taking into consideration the price before issuance of the notification under section 4 of the Act, which was against the law. The learned Advocate submitted that the proper course for the Collector was to determine the compensation of the houses on the basis of market value. The loss sustained by the respondents-petitioners and by taking into consideration the other factor enumerated in section 23 of the Land Acquisition Act. In support of his submission, the learned Advocate placed reliance on a case reported as *Azad Government of the State of Jammu and Kashmir and 2 others vs. Muhammad Rafique Khan & 9 others* [2009 SCR 320] and *Azad Government of the State of Jammu & Kashmir through its Chief Secretary, having his office at New Secretariat Complex, Muzaffarabad and 7 others vs. Shahibzada Raja Muhammad Hanif Khan and others* [2013 SCR 513]. The learned Advocate argued that the enhancement ordered by the learned High Court if it considered in the

circumstances of the case then it cannot be said that the same is too high. The enhancement made by the learned High Court according to the learned Advocate is neither unreasonable nor against the evidence. He argued that the Reference Judge has illegally disbelieved the evidence of the respondents-petitioners mere on the ground that they are interested persons. He argued that the respondents are the owner of the land and they have constructed the houses, therefore, the respondents are the best witnesses to state the actual expenditures occurred on the construction as well as to state the market value of the land.

5. We have heard the learned Advocates for the parties and gone through the record of the case. A perusal of the record reveals that the houses under code Nos. M-738, M807B and M-738A belonging to the respondents-petitioners, herein, were acquired for construction of Mangla Dam Raising Project vide award No. 313 of 2009 dated 13.05.2009. The collector has determined

the compensation of the aforementioned houses as Rs. 714799/-, Rs. 789430/- and Rs. 1031749/-, respectively. The respondents-petitioners through separate references challenged the legality and correctness of the determination of the compensation by the Collector. After necessary proceedings, the learned Reference Judge has enhanced the compensation determined by the Collector to the tune of Rs. 8,07723/-, Rs. 89256/- and Rs. 1165876/-, respectively. This compensation has been further enhanced by the learned High Court as under:—

S. No.	House No.	The Compensation enhanced in second round by the High Court.
1.	M-738	Rs. 1100000/-
2.	M-807-B	Rs. 1200000/-
3.	M-738-A	Rs. 1500000/-

6. It may be stated with heavy heart that in the early round of litigation, this Court has remanded the case to the learned High Court for proper decision but perusal of the impugned judgment reveals that the learned High Court has again given a telegraphic judgment without discussing the evidence and comparing the

cases referred to and relied upon in the judgment. The judgment of a Court of law must be a speaking one referring to the pleadings of the parties and discussing the evidence brought on record pro and contra and giving reason in support of acceptance or rejecting of evidence. A telegraphic judgment cannot be regarded as a judicial order of Court of law. In a 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 in a land acquisition matter has taken serious notice of the judgment which was given without considering the evidence and record of the case in a perfunctory manner. In paragraph 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 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.”

7. We intend to remand the case again but the same is not desirable as the parties have already faced the agony of trial. We also observed with heavy heart that even after remand, the learned High Court has not complied with the judgment of this Court, therefore, the remand of the case would not be useful. The appellant, herein, has produced Muhammad Dawood son of Bostan Khan who has categorically stated that he has visited the houses which have been constructed on 16 marls of the land and the houses are well equipped with all the modern facilities. Similarly, Muhammad Ayub, one of the respondents, has also appeared and has supported his reference. Abdul Razzaq, Khalid Khan, Muhammad Musharaf and Muhammad Iqbal have also supported the reference.

However, the learned High Court has relied upon the statement of a private engineer which was not acceptable in view of the case law referred to and relied upon by Haji Muhammad Afzal, the learned Advocate for the appellant. The learned Reference Judge has not accepted the oral account of evidence and even then he has made the enhancement in the compensation. It may be observed that the oral statements of the witnesses cannot be disbelieved.

8. We have seen that there is not much difference between the compensation awarded by the learned High Court and that of the Reference Judge. While accepting the evidence brought on record and considering the overall circumstances of the case, the dislocation of the respondents-petitioners, we will maintain the compensation awarded by the learned High Court for our own reasons, however, the award of interest by the learned High Court is not proper, the same is recalled.

With this modification, the impugned judgment of the learned High Court is maintained. This appeal stands decided in the manners indicated above. No order as to costs.

Mirpur
.....04.2019.

JUDGE

JUDGE