

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

**PRESENT:**

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

Civil Appeal No.230 of 2018  
(PLA filed on 23.07.2018)

1. WAPDA through Director Legal WAPDA, WAPDA House, Lahore.
2. Superintending Engineer Resettlement, Mangla Dam Raising Project, Mangla, Mirpur Azad Kashmir through Director Legal WAPDA, WAPDA House, Lahore.
3. Chief Engineer Mangla Dam Raising Project, Mangla, Mirpur Azad Kashmir through Director Legal WAPDA, WAPDA House Lahore.

....APPELLANTS

**VERSUS**

1. Rabia Bibi (deceased) represented by respondents No.2 to 5.
2. Muhammad Hanif,
3. Muhammad Habib,

4. Muhammad Saghir, sons,
5. Ulfat Begum,
6. Zubeda Begum,
7. Ambar Kousar,
8. Shumaila Sultana, daughters of Hayat Ali,, caste Jat,
9. Mst. Kaheero Begum w/o Sher Baz,
10. Muhamamd Afsar,
11. Khadam Hussain, sons,
12. Zeenat Begum,
13. Fazilat Begum,
14. Farzand Begum, daughters of Sher Baz,
15. Shahida Begum, daughter,
16. Muhammad Irfan,
17. Muhammad Suleman sons of Waliat Begum, caste Jatt,
18. Muhammad Iqbal son of Reham Ali,
19. Qadeem Hussain son of Muhammad Qayyum, caste Jat, r/o village Sarroh, Tehsil Dadyal, District Mirpur.

....RESPONDENTS

20. Azad Government of the State of Jammu and Kashmir through its Chief Secretary, Muzaffarabad.
21. Commissioner Mangla Dam Raising Project, Mirpur.

22. The Collector Land Acquisition Mangla Dam Raising Project, Mirpur.

....PROFORMA RESPONDENTS

(On appeal from the judgement and decree of the High Court dated 15.05.2018 in civil appeal No.79 of 2014)

FOR THE APPELLANTS: M/s Javed Najam-us-Saqib, Advocate

FOR THE RESPONDENT: Ch. Tahseen Ahmed, Advocate.

*Date of hearing:* 20.01.2019

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**— The above titled appeal by leave of the Court has been directed against the consolidated judgment and decree passed by the High Court on 15.05.2018, whereby the appeals filed by the contesting parties have been dismissed.

2. The facts necessary for disposal of this appeal are that the land owned by the

respondents, herein, situate at village Sarroh, Tehsil Dadyal, was acquired for Mangla Dam Raising Project vide award No.19/2007, dated 29.05.2007. The Collector Land Acquisition determined the compensation of the acquired land at the rate of Rs.4,00,000/*kanal* for its kind *heal*, Rs.3,00,000/*kanal* for its kind *maira awal*, Rs.2,50,000/*kanal* for its kind *maira doem*, Rs.50,000/*kanal* for its kind *banjer qadeem*, Rs.20,000/*kanal* for its kind *degar ghair mumkin* and Rs.4,20,000/*kanal* for its kind *ghair mumkin abadi*. Feeling dissatisfied from the compensation determined by the Collector, the landowners, respondents, herein, filed a reference application. The learned Reference Judge after necessary proceedings enhanced and fixed the compensation as Rs.8,00,000/ *kanal* irrespective of the kinds of land vide its judgment and decree dated 28.02.2014. The

contesting parties feeling aggrieved from the judgment and decree passed by the Reference Judge filed separate appeals before the High Court. The learned High Court vide impugned judgment dated 15.05.2018, dismissed both the appeals, hence, this appeal by leave of the Court.

3. Mr. Javaid Najam-us-Saqib, Advocate, the learned counsel for the appellants submitted that the impugned judgment is against law and the facts of the case which is liable to be vacated. He contended that the land measuring 1211 *kanal*, having different kinds, was acquired in bulk for Mangla Dam Raising Project; therefore, the learned Reference Judge was not justified to fix the compensation irrespective of the kinds of land. The learned High Court has also failed to take into consideration the illegality committed by the Reference Judge. He contended that the

Courts below at one hand have held that the landowners failed to prove their claim but on the other hand enhanced the compensation which is not warranted under law. He added that the learned Reference Judge enhanced the compensation mere on the strength of judgment of this Court delivered in another case and has not considered the principle of law enunciated by this Court in a number of cases that every piece of land has its own potential value and the compensation can only be determined in the light of the evidence produced by the parties. In this regard, he referred to and relied upon the case law reported as *WAPDA & 2 others v. Farooq Shahid & 10 others* [2016 SCR 1730]. He prayed for setting aside the impugned judgment.

4. On the other hand, Ch. Tahseen Ahmed, Advocate, the learned counsel for the

respondents strongly opposed the arguments advanced by the learned counsel for the appellants. He submitted that the land in dispute is agricultural land and the Collector Land Acquisition without spot inspection divided the same into different kinds; therefore, the learned Reference Judge has committed no illegality while fixing the compensation irrespective of the kinds of land. In this regard the learned counsel referred to the statement of a landowner and contended that he specifically stated in his statement that the land in question was being utilized for agricultural purpose but this portion of the statement has not been cross-examined by the appellants; meaning thereby that the appellants admitted the claim of the respondents. He further added that the landowners by producing un-rebutted evidence proved their claim, whereas, the appellants

failed to bring on record an iota of evidence to justify the compensation determined by the Collector, thus, the learned Reference Judge rightly enhanced the compensation. He referred to and relied upon the case law reported as *Muhammad Mehrban v. WAPDA through Chief Engineer/Project Director Mangla Dam Raising Project, Mirpur and 3 others* [2013 SCR 635], *Zafar alias Mumtaz and another v. Mst. SDajjad Begum and 7 others* [2014 SCR 1549], *Sabir Hussain v. Collector Land Acquisition and 16 others* [2015 SCR 608] and *Raja Abdul Qayyum Khan v. Azad Govt. & 2 others* [2016 SCR 623] and prayed for dismissal of appeal.

5. We have heard the arguments of the learned counsel for the parties and gone through the record along with the impugned judgment. The main grievance of the appellants before this Court is that the land in

question is consisting of different kinds but the learned Reference Judge without any justification fixed the compensation irrespective of its kinds; whereas, the claim of the landowners is that the whole land owned by them was agricultural and the Collector wrongly divided the same into different kinds while determining the compensation. From the record it appears that one of the landowners, Muhammad Hanif Ali, while recording his statement deposed that the appellants had been utilizing the disputed land for agricultural purpose and the Collector wrongly divided the same into different kinds. The relevant portion of his statement reads as under:-

"متاثرہ اراضی زیر ریفرنس ہموار رقبہ تھا اور کاشت ہوتا تھا۔ مظہر خود رقبہ کاشت کرتا تھا۔ متاثرہ اراضی زیر ریفرنس سے اچھی فصل پیدا ہوتی تھی جس سے نہ صرف ہم ساہلان کی ضرورت پوری ہوتی تھی بلکہ گاؤں کے دیگر افراد جو ملحقہ گاؤں کے تھے ان کو بھی اناج دیا جاتا تھا۔ متاثرہ اراضی جملہ قابل کاشت تھی کلکٹر نے متاثرہ اراضی کی اقسام غلط درج کی ہیں۔"

The aforesaid portion of the statement of the witness has not been cross-examined and under law such portion of the statement shall be deemed to be admitted as correct. In this regard, the learned counsel for the respondents has rightly referred to and relied upon the case law reported as *Zafar alias Mumtaz and another v. Mst. SDajjad Begum and 7 others* [2014 SCR 1549] and *Raja Abdul Qayyum Khan v. Azad Govt. & 2 others* [2016 SCR 623]. The learned counsel for the appellants during the course of arguments submitted that the Collector Land Acquisition determined the compensation in accordance with law but the learned Reference Judge without any justification enhanced the compensation. We do not agree with the stance taken by the learned counsel for the appellants as the Collector at one hand himself admitted that due to strong financial position

the people of the vicinity are not ready to sell the land and the market value of the acquired land is much high but on the other without adhering to the well established principle of law that the market value of the land is such price on which the owner of the land is ready to sell and willing buyer is ready to purchase, determine a meager amount of compensation. The relevant findings of the Collector read as under:-

"مالکان دیہہ کی اکثریت بسلسلہ روزگار بیرون ملک مقیم ہے جس وجہ سے دیہہ ہذا میں اراضی کی خرید و فروخت کارجان نہ ہے۔ لوگوں کے بیرون ملک مقیم ہونے کی بناء پر ان کی مالی حالت بہت اچھی ہے۔ اور مضبوط معاشی حالت کی بناء پر انکی قوت خرید بھی بہتر ہے جس بناء پر اراضی کی قیمت زیادہ ہے۔"

From the record it also depicts that the landowners in support of their claim brought on record different sale-deeds and also got recorded the statements of the witnesses, whereas, in rebuttal the appellants failed to bring on record any evidence. Thus, in such

state of affairs, we do not intend to interfere with the enhancement made in the compensation by the learned Reference Judge.

In view of the above, this appeal being devoid of any force is hereby dismissed with no order as to costs.

Mirpur,

**JUDGE**

**JUDGE**

21.01.2019

WAPDA & others v. Rabia Bibi & others

**ORDER:-**

The judgment has been signed. The same shall be announced by the Addl. Registrar after notifying the learned counsel for the parties.

Mirpur,

**JUDGE**

**JUDGE**

21.01.2018