

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.

Civil Appeal No.107 of 2019
(Filed on 11.06.2019)

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

....APPELLANTS

VERSUS

1. Iftikhar Ali son of Karamat Ali, caste Jatt, r/o Laddhar, Chaksawari, Tehsil and District Mirpur.

....RESPONDENT

2. The Collector Land Acquisition Mangla Dam Raising Project, Mirpur.
3. Azad Government through its Chief Secretary Muzaffarabad.

.... PROFORMA RESPONDENTS

(On appeal from the judgement and decree of the High Court dated 12.04.2019 in civil appeal No.34 of 2013)

FOR THE APPELLANTS: Mr. Javed Najam-us-Saqib, Advocate.

FOR THE RESPONDENTS: Mr. Muhammad Khalil Ghazi, Advocate.

Civil Appeal No.114 of 2019
(Filed on 18.06.2019)

Iftikhar Ali son of Karamat Ali, cost Jatt, r/o Laddhar Chakswari, Tehsil and District Mirpur.

....APPELLANT

VERSUS

1. WAPDA through Director Legal WAPDA, WAPDA House Lahore.

2. Chief Engineer, Mangla Dam Raising Project, Mangla AK through Director Legal WAPDA, WAPDA House Lahore.
3. Superintending Engineer Resettlement, Mangla Dam Raising Project, Mangla AK through Director Legal WAPDA, WAPDA House Lahore.
4. Collector Land Acquisition Mangla Dam Raising Project, Mirpur.
5. Azad Government of the State of Jammu and Kashmir through its Chief Secretary Azad Jammu and Kashmir Muzaffarabad new Secretariat, Muzaffarabad.

....RESPONDENTS

(On appeal from the judgement and decree of the High Court dated 12.04.2019 in civil appeal No.34 of 2013)

FOR THE APPELLANT: Mr. Muhammad Khalil Ghazi, Advocate.

FOR THE RESPONDENTS: Mr. Javed Najam-us-Saqib, Advocate.

Date of hearing: 25.02.2020

JUDGMENT:

Raja Saeed Akram Khan, J.— Both the titled appeals have been directed against the common judgment and decree passed by the High Court on 12.04.2019, whereby the appeal filed by the appellant, *Iftikhar Ali* (owner), has been accepted.

2. The facts necessary for disposal of these appeals are that a brick-kiln owned by the appellant, Iftikhar Ali, situate at mozia Laddhar, Tehsil and District Mirpur, was acquired for Mangla Dam Raising Project vide award No.1139/2011. The Collector Land Acquisition assessed the market value of the brick-kiln as Rs.49,91,420/-. The owner feeling dissatisfied filed a reference application and claimed that the market value of the brick-kiln is not less than Rs.1,00,000,00/- and he is entitled to get the compensation at the claimed rate. The learned Reference Judge

while partly accepting the reference application enhanced the compensation to the tune of Rs.13,77,426/- along with 15% compulsory acquisition charges and 6% interest vide its judgment and decree dated 03.11.2012. The owner again feeling aggrieved filed an appeal before the High Court for further enhancement in the compensation. The learned High Court vide impugned judgment dated 12.04.2019, while accepting the appeal further enhanced and fixed the compensation as Rs.72,04,425/-. Against the judgment of the High Court both the parties have filed the instant appeals; the appellants, WAPDA & others filed appeal for setting aside the enhancement made by the High Court, whereas, the owner filed the appeal for further enhancement.

3. Mr. Javed Najam-us-Saqib, Advocate, while appearing on behalf of the appellants, *WAPDA and others*, submitted that the joint

team of the Civil Engineers after thoroughly examining the quality and quantity of the material used in the construction of acquired brick-kiln, prepared the building replacement cost valuation and the compensation was rightly awarded to the owner according to the said valuation, but the Courts below without any justification made further enhancement in the compensation. He contended that the owner failed to prove his claim by producing cogent evidence but despite that the enhancement has been made in the compensation which is not warranted under law. He maintained that the owner also failed to prove the production of bricks through evidence but the Courts below while making enhancement in the compensation have assessed the annual income of the kiln in vacuum. He prayed for restoration of the

compensation amount determined by the Collector.

4. On the other hand, Mr. Muhammad Khalil Ghazi, Advocate, while appearing on behalf of the appellant, Iftikhar Ali, submitted that the appellant by producing documentary as well oral evidence proved that the market value of the brick-kiln in question is not less than Rs.1,00,00,000/- but the Courts below failed to appreciate the same in a legal manner. He contended that while assessing the business loss, the Collector Land Acquisition had committed some mistakes in the award but the Courts below have not considered this aspect of the case. He submitted that the appellant has been deprived of a valuable property and under law maximum possible benefit should have been granted to him but this aspect also escaped

the notice of the Courts below. He prayed for further enhancement in the compensation.

5. We have heard the arguments and gone through the record made available along with the impugned judgment. The perusal of the record shows that the Collector Land Acquisition assessed the market value of the brick-kiln to the tune of Rs.45,91,421/-; the learned Reference Judge enhanced and fixed the compensation as Rs.59,68,847, whereas, the learned High Court further enhanced and fixed the same as Rs.72,04,425/-. The claim of the owner is that the market value of the brick-kiln is not less than Rs.1,00,00,000/-, although, the evidence brought on record by the owner is sufficient to hold that he was not properly compensated while acquiring the brick-kiln, but he failed to bring on record such reliable evidence through which it can be ascertained that the market value of the brick-

kiln was Rs.1,00,00,000/- at the relevant time. The learned High Court in the impugned judgment has discussed the material available on record and the counsel for both the parties failed to point out any illegality in the same. The learned counsel for the appellants, *WAPDA & others* during the course of arguments forcefully submitted that the joint team of the Civil Engineers after thoroughly examining the quality and quantity of the material used in the acquired brick-kiln, prepared the building replacement cost valuation, therefore, the Collector rightly determined the compensation on the basis of the said valuation. It may be observed here that this Court in a number of cases has held that if the Civil Engineers of the joint team prepared a wrong estimate in any case, that cannot be followed blindly. In the instant case, sole reliance cannot be placed on the estimate prepared by the joint team of the

Civil Engineers especially when the appellants, *WAPDA and other*, failed to bring on record anything to rebut the evidence brought on record by the owner. Keeping in view the peculiar facts of the case and the material brought on record, we do not intend to interfere with the judgment of the High Court.

Resultantly, finding no force these appeals stand dismissed with no order as to costs.

Mirpur, **JUDGE** **CHIEF JUSTICE**
26.02.2020

