

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 98 of 2019

(Filed on 27.5.2019)

1. WAPDA through Chairman WAPDA Lahore.
 2. Chief Engineer, MDRP WAPDA, Mangla
- APPELLANTS

VERSUS

1. Ghulam Farooq s/o Mohammad Latif,
2. Mohd. Mahroof s/o M. Latif,
3. A. Razzaq s/o M. Deen,
4. Khalid,
5. Asif sons of Abdul Razzaq,
6. A. Ghafoor s/o M. Sidique,
7. Allah Ditta s/o Ali Shah r/o Mera Chandral, Thotnal, Tehsil and District Mirpur.

..... RESPONDENTS

8. Collector Land Acquisition Mangla Dam Raising Zone Mirpur.
9. AJK Govt. Through its Chief Secretary Muzaffarabad.
10. Commissioner Mangla Dam Affairs, Mirpur.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated
8.4.2019 in Civil Appeal No. 324 of 2010)

FOR THE APPELLANTS: Mr. Zakariya Bhatti,
Advocate.

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

Date of hearing: 26.2.2020.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal arises out of the judgment dated 8.4.2019 passed by the Azad Jammu & Kashmir High Court in civil appeal No. 324 of 2010.

2. The brief facts forming the background of the captioned appeal are that the respondents, herein, filed separate reference applications before the Reference Judge Mangla Dam Raising Project Mirpur on 24.6.2010. It was stated that the Collector Land Acquisition acquired the houses of the petitioners, situated in village Thothal Tehsil and District Mirpur for Mangla Dam Raising Project Mirpur vide award No. 287/2009 issued on 1.4.2009, whereby the compensation of the houses of the petitioners bearing code Nos. M.699B, M-120, M-146, M-

697B and M-140 has been fixed as Rs.5,80,002/-, Rs. 6,30,196/- Rs.25.21,340/-, Rs.8.63.860/- and Rs. 9,83,325/-. It was further stated that the compensation of the acquired houses was not determined while taking into consideration their commercial and potential value as well as the material used and the present hike in the prices, which is unjust, unfair and against the rights of the petitioners. The learned Reference Judge consolidated all the references, in light of the pleadings of the parties framed issues and directed them to lead evidence pro and contra. At the conclusion of the proceedings vide judgment and decree dated 24.6.2010 enhanced the compensation to the tune of Rs.1,04,400/-, Rs.1,13,434/-, Rs. 4,53,841/-, Rs.85,663/- and Rs.1,76,999/- relating to houses bearing code Nos. M-699-B, M-120, M-146, M-697-B and M-140 respectively along with 15% compulsory acquisition charges. The petitioners were also held entitled to receive interest @ 6% chargeable on the enhanced

compensation from the date of acquisition of the houses. Feeling aggrieved from the said judgment and decree, the respondents, herein, filed an appeal before the Azad Jammu & Kashmir High Court on 7.8.2010 for further enhancement of the compensation. The learned High Court after hearing the parties vide impugned judgment and decree dated 8.4.2019 while accepting the appeal has modified the judgment dated 24.6.2010 passed by the learned Reference Judge and fixed the compensation of houses bearing code Nos. M699B, M-120, M-146, M-697-B and M-140 as Rs.10,70,580/-, Rs.11,12,245/-, Rs.37,86,025/- Rs.16,57,279/- and Rs.15,89,325/- respectively. Against the said judgment of the learned High Court the appellants, herein, has filed the captioned appeal for setting aside the same.

3. Mr. Zakaiya Bhatti, the learned Advocate for the appellants has filed written arguments, wherein it is stated that burden of proof that land has been acquired on a lesser

amount was on the respondents-petitioners, but no cogent evidence has been led by them for the purpose. It is further stated that WAPDA constituted and appointed a committee consisting of Engineers from the Azad Kashmir and WAPDA and on the basis of their report the compensation was properly assessed, which was liable to be maintained, but on the basis of oral evidence of the persons of same village, the compensation has been enhanced arbitrarily. It is further stated that respondents have neither produced any expert nor any other engineer, who assessed the original costs of construction of their houses. It is next stated that the contractor who has constructed the houses is not an expert and also failed to disclose the exact price of the material used in the construction of the houses. The learned Advocate further stated in the written arguments that the learned Reference Judge as well as the learned High Court has enhanced the compensation without any evidence brought on

record, hence, their judgments are arbitrarily and violative of law. Reliance has been placed on a case titled *Chief Engineer WAPDA vs. Muhammad Ilyas & others* announced on 23.4.2019.

4. Conversely, Mr. Muhammad Khalid Ghazi, the learned Advocate appearing for the respondents argued that the evidence led by the respondents, herein, has not been rebutted by the appellants and the learned High Court has properly appreciated the evidence and enhanced the compensation keeping in view the potential and commercial value of the house. The learned Advocate further argued that the Collector has wrongly assessed the compensation on the basis of the report of a team which was constituted prior to acquisition proceedings and issuance of notification under section 4 of the Land Acquisition Act.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. It may be stated that vide

award No. 287/2009 issued on 1.4.2019 the houses mentioned under code Nos. M-699-B, M-120, M-146, M-697-B and M-140 were acquired for Mangla Dam Raising Project. The compensation of the houses was determined as Rs.5,80,002/-, Rs.6,30,191/-, Rs.25,21,340/-, Rs.8,63,860/- and Rs.9,83,325/- respectively. The respondents, herein, felt aggrieved from the determination of the compensation and filed references before the Reference Judge, who enhanced the compensation as listed in the judgment of the learned Reference Judge along with 15% compulsory acquisition charges. The respondents filed an appeal for further enhancement before the Azad Jammu & Kashmir High Court and the learned High Court after revisiting the evidence and considering the record has further enhanced the compensation through the impugned judgment. The respondents, herein, have produced Exh. "PA", Exh. "PA/1", Exh. "PA/2", Exh. "PA/3" and Exh. "PA/4" and estimated costs of houses under

references. These documents have been prepared by Abdul Ghafoor, Building Contractor, who has appeared before the Court and submitted that he has constructed the houses and estimated costs given by him through afore-stated documents was spent on the construction of the houses. The learned High Court has discussed the every piece of evidence and came to the conclusion that the appellants have not rebutted the evidence led by the respondents through any document or statement of the Collector or the member of the committee who has assessed the compensation before issuance of notification under section 4 of the Land Acquisiotn Act. In such state of affairs, we are of the view that the compensation enhanced by the learned High Court is neither arbitrary nor fanciful. The respondents, herein, have been deprived of their property, which has potential value. The judgment passed by the learned High Court cannot be set aside on the basis of surmises and conjectures or on the grounds

listed by Mr. Zakariya Bhatti, the learned Advocate for the appellants.

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

JUDGE

CHIEF JUSTICE.

Mirpur.
27.2.2020.

