IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Shariat Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAJA SAEED AKRAM KHAN, C.J.
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEAL No. 168 OF 2023

(Against the judgment dated 27.10.2023, passed by the High Court in Civil Appeal No. 159 of 2011).

WAPDA and others.

…Appellant(s)

VERSUS

Barkat Hussain and others.

…Respondents

Appearances:

For the Appellant(s):	Mr. Javaid Najam-us-Saqib, Advocate.
For the respondent(s):	Mr. Javaid Iqbal Satti, Advocate.
Date of hearing:	17.11.2025.

JUDGMENT:

***Raza Ali Khan, J*:-** This instant direct appeal has been filed against the judgment dated 27.10.2023,

whereby the appeal preferred by the respondents has been partly accepted.

2. The facts, concisely stated, are that the appellants acquired a tract measuring 124 kanals and 8 marlas of the respondents' land situated in Mozia Onah, Tehsil Dadyal, for the Mangla Dam Upraising Project, Mirpur, through an award dated June 12, 2008, wherein compensation was assessed a kind-wise categorization. Aggrieved, the respondents invoked the jurisdiction of the Reference Court, Mangla Dam Raising Project, Mirpur, seeking enhancement of compensation. The Reference Judge, vide judgment and decree dated May 03, 2011, partly acceded to the reference and marginally enhanced the compensation kind-wise along with 15% Compulsory Acquisition Charges. Dissatisfied, the respondents preferred an appeal before the High Court, which, through the impugned judgment dated October 27, 2023, partly allowed the appeal and re-determined the compensation uniformly at Rs. 12,60,700/- per kanal, irrespective of kind, together with 15% CAC.

3. Mr. Javaid Iqbal Satti, counsel for the respondents, while relying on *2023 SCR 913*, raised a preliminary objection that the appeal is procedurally incompetent as it fails to satisfy Order XII Rule 4(iii) of the Azad Jammu and Kashmir Supreme Court Rules, 1978, which mandates service of the appeal on each respondent. He submitted that the appellant dispatched copies to only 40 respondents out of a total of 114. When this infirmity was put to the appellant's counsel, he was unable to advance any satisfactory explanation.

4. We have heard the parties' counsel and examined the record. Order XII Rule 3 of the Azad Jammu and Kashmir Supreme Court Rules, 1978, imposes a mandatory duty upon an appellant to serve each respondent with copies of the petition of appeal, and Rule 4(iii) further requires an affidavit affirming full and proper service. Although the appellant has filed an affidavit asserting service upon all respondents, the record contains postal receipts for only 40 out of 114 respondents thereby, rendering compliance incomplete, deficient and legally insufficient. Given the mandatory nature of these procedural requirements, the preliminary objection must prevail, and the appeal is liable to be dismissed on this ground alone. The respondents' counsel has rightly relied upon *Saqib Majeed Raja v. Ch. Latif Akbar & others*[1], a judgment of this Court wherein, the Court reiterated the non-service upon all respondents in a multi-party appeal constitutes a fatal procedural lapse warranting dismissal: -

> "6. We have heard the learned counsel for the parties and gone through the record made available. First of all, we would like to take up the preliminary objection raised by the learned counsel for respondent. Order XII, Rule 3 of the Azad Jammu and Kashmir Supreme Court Rules, 1978 provides that:-
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> *"3. The petition shall set forth the appellant's objections to the decision of the High Court, and where the appellant desires to raise other grounds in the appeal, the petition of appeal shall be accompanied by a separate petition*

[1] [2023 SCR 913]

indicating the grounds so proposed to be raised and praying for special leave to appeal on these grounds, and the petition for special leave, shall, unless the Court otherwise directs, be heard at the same time as the appeal. Copies of the petition of appeal shall be served on the respondent."

This rule makes it mandatory for the appellant to serve on the respondent the copies of the petition of appeal. It is admitted by the appellant in paragraph 9 of the appeal that the copies of the petition have not been served on other respondent because the only contesting candidate is respondent No.1. We are afraid, the contention of learned counsel for the appellant is not correct as the rules on the subject are clear that the copies of the petition of appeal shall be served on the respondents. There is no distinction of contesting or non-contesting candidates, hence, the preliminary objection prevails and this appeal is liable to be dismissed on this sole ground."

In view of the above, this appeal stands dismissed.

JUDGE **CHIEF JUSTICE**

Mirpur,
18.11.2025.