

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
ABBOTTABADBENCH
(Judicial Department)

RFA No.243-A/2020

Aurangzeb Khan & others
Versus
Collector Land Acquisition & others

JUDGMENT

For Appellants: Mr. Saeed Ullah Khan, Advocate.

For Respondents: Mr. Nauman Malik, Deputy Attorney
General and Abdul Sattar Khan Jadoon,
Assistant Attorney General.

Date of hearing: **18.04.2024**

MUHAMMAD FAHEEM WALI, J.- Through this
common judgment, I intend to decide the following
appeals, as common questions of law and facts are
involved therein:

- 1) **RFA No. 243-A/2020**
*Aurangzeb Khan etc. Vs. Collector Land
Acquisition & others.*
- 2) **RFA No. 240-A/2020**
Muhammad Riaz & others Vs. Collector etc.
- 3) **RFA No. 262-A/2020**
*Lal Khan & others Vs. Collector Land
Acquisition & others.*

- 4) **RFA No. 261-A/2020**
Mst. Anwar Jan & others Vs. Collector Land Acquisition & others.
- 5) **RFA No. 260-A/2020**
Khan Gul Khan Vs. Collector Land Acquisition & others.
- 6) **RFA No. 259-A/2020**
Ghulam Mustafa Khan Vs. Federal Government of Pakistan
- 7) **RFA No. 242-A/2020**
Muhammad Kaleem Quershi vs. Collector etc.
- 8) **RFA No. 241-A/2020**
Iftikhar Khan & others Vs. Collector Land Acquisition & others.
- 9) **RFA No. 273-A/2020**
Muhammad Haroon & others Vs. Collector Land Acquisition & Others.
- 10) **RFA No. 352-A/2020**
Mazhar Iqbal & others Vs. Collector Land Acquisition & others.
- 11) **RFA No. 395-A/2020**
Government of Pakistan Etc. Vs. Abdul Qayyum Khan
- 12) **RFA No. 396-A/2020**
Government of Pakistan etc. Vs. Mazhar Iqbal & others.
- 13) **RFA No. 397-A/2020**
Government of Pakistan etc. Vs. Lal Khan & Others.
- 14) **RFA No. 398-A/2020**
Government of Pakistan etc. Vs. Iftikhar Khan & others.
- 15) **RFA No. 399-A/2020**
Government of Pakistan etc. Vs. Muhammad Fareed Khan & others.
- 16) **RFA No. 400-A/2020**
Mst. Anwar Jan & others Vs. Collector Land Acquisition & others.

- 17) **RFA No. 401-A/2020**
Government of Pakistan etc. Vs. Muhammad Kaleem Qureshi.
- 18) **RFA No. 402-A/2020**
Government of Pakistan Vs. Mst. Anwar Jan.
- 19) **RFA No. 403-A/2020**
Government of Pakistan etc. Vs. Muhammad Haroon & Others.
- 20) **RFA No. 404-A/2020**
Government of Pakistan etc. Vs. Aurangzeb Khan & others.
- 21) **RFA No. 405-A/2020**
Government of Pakistan & others Vs. Khan Gul.
- 22) **RFA No. 406-A/2020**
Government of Pakistan etc. Vs. Ghulam Mustafa Khan.
- 23) **RFA No. 407-A/2020**
Government of Pakistan etc. Vs. Aurangzeb Khan etc.

2. Facts forming background of these connected appeals is that the landed property measuring 737 Kanals 5 Marlas situated at Mauza Nawanshehr Shumali, Abbottabad was acquired by the Land Acquisition Collector for extension of PMA, Abbottabad through Award No. 259 dated 19.05.2016. In the Award, compensation of the acquired land was fixed on the basis of one year average from 22.07.2013 to 22.07.2014 as under;

<i>Bagh:</i>	<i>Rs. 37,22,282/60 Per Kanal.</i>
<i>Bahir De Abi:</i>	<i>Rs. 18,40,229/60 Per Kanal</i>
<i>Bari:</i>	<i>Rs. 15,056,42/40 Per Kanal</i>

Bela: Rs. 17,14,759/40 Per Kanal

Maira: Rs. 7,52,821/20 Per Kanal

GherMazroha: Rs. 41823/40 Per Kanal

Cost of Fruit Trees:Rs. 7,290361/75

Cost of Fruitless Tees: Rs. 3485880/-

Cost of Built up Properties: Rs. 1254075/-

3. The affected land owners aggrieved of the meagre amount of compensation, so evaluated in the Award, filed their respective reference petitions under Section 18 of the Land Acquisition Act, 1894, for the redetermination of rate of compensation. The said reference petitions were processed in accordance with law whereby parties adduced evidence of their choice and the learned Referee Court also deputed commission. Finally, after hearing arguments, the learned Referee Court, partially allowed the reference petitions and fixed the compensation at flat rate of Rs.250,000/- per Marla and 50,00,000/- Per Kanal irrespective of kind and nature of the property, with 25% compulsory acquisition Charges. However, 6% interest on unpaid amount was not granted by the learned Referee Court. The objectors still dissatisfied with the rate of compensation, filed their separate appeals for further enhancement of the rate of compensations; whereas the acquiring department is aggrieved from the enhanced rate of compensation and they too filed their separate

appeals to restore the rate of compensation as awarded by the Collector in the impugned Award.

4. Arguments of the learned counsel for parties heard and record gone through with their valuable assistance but for the sake of brevity, without reproducing the arguments of the counsels, same will be adequately dealt with at appropriate stages in this judgment.

5. Perusal of the record reveals that the property was acquired through Award No.259 dated 19.05.2016 whereby an area of 737 Kanals 5 Marlas, situated in Mauza Nawanshehr Shumali, Abbottabad was acquired for the extension of PMA, Abbottabad. For the purpose of determination of compensation of the awarded land, the Collector has relied upon one year average w.e.f 22.07.2013 to 22.07.2014, because Notification under Section 4 of the Land Acquisition Act was issued on 22.07.2014. The objectors raised objection upon the compensation mainly on the ground that since they were not willing seller of the property, rather their property was carrying high future potentials, falling in centre of the commercial as well as posh residential areas of the District, Abbottabad, therefore, the accurate mutations were not available with the Collector to assess the market

value at the time of its acquisition and the acquired property was not less than 25,00,000/- per Marla.

6. Now the questions before this court are, whether the learned Referee Court was justified in enhancing the rate of compensation and whether, such enhancement is adequate to meet the ends of justice?

7. There is no denial of the fact that the land was acquired from Mauza Nawanshehr Shumali, Abbottabad which is surrounded by the commercial as well as posh residential areas of District Abbottabad. Moreover, the acquired land is situated in city area and after the earthquake of 2005, the prices of plain lands in city area are increasing with every passing day. The Collector issued notification under Section 4 of the Land Acquisition Act in the instant case on 22.07.2014, whereas the Award was announced on 19.05.2016. The land owners objected the compensation assessed by the Collector and in the Award, it was mentioned by the Collector himself that *“no doubt that demands of the land owners are correct to some extent and it is increasing day by day, but compensation of the land is always determined on the basis of one year average price of land prior to the issuance of notification under Section 4 of LAC 1894*

and the same procedure has been adopted in the instant case on the basis of one year average price of land for the period from 22.07.2013 to 22.07.2014". This fact shows that the Collector himself was not satisfied with the rate of compensation fixed by him, but in order to follow the procedure, the one year average was relied by him in order to assess the market value of the acquired land. The record further manifests that the acquired land is surrounded by residential & commercial activities which make it clear that the land so acquired had a high potential for development into commercial or residential projects in the near future. While rendering this view I am fortified by the verdict of the worthy Apex Court rendered in the case of *"Province of Punjab through Collector, Bahawalpur and others Vs. Col. Abdul Majeed and others"* (1997 SCMR 1692), wherein some guidance has been provided for assessing the market value of the land acquired; and the relevant excerpt runs as under:

- (i) **That an entry in the Revenue Record as to the nature of the land may not be conclusive, for example, land may be shown in Girdawari as Maira, but because of the existence of a well near the land makes it capable for becoming Chahi land.**

- (ii) That while determining the potentials of the land, the use of which the land is capable of being put, ought to be considered.
- (iii) That the market value of the land is normally to be taken as existing on the date of publication of the Notification under section 4(1) of the Act but for determining the same, the price on which similar land situated in the vicinity was sold during the preceding 12 months and not 6-7 years back may be considered including other factors like potential value etc.

8. The same view was reiterated in the case of *“Secretary to Government of N.-W.F.P., Peshawar and 15 others Vs. Haji Fateh Khan and 15 others”*(2001 SCMR 974).

9. The contention of the land owners that there were no adequate mutations, worth reliance for the purpose of assessing its compensation, also gets support from the facts that the respondents had acquired lands for the extension of PMA manifold and during course of evidence, representative of the MEO namely Bilal Afzal, himself produced copy of Award No. 179 dated

28.11.2005, by stating that the property acquired through Award No. 179 was adjacent to the property acquired through Award No. 259. It is also an admitted fact that prominent schools, plazas and other business activities are carried out in close proximity of the acquired land and it is not only surrounded by posh residential areas but also located at prime location of the District, which are the factors which proves that the acquired land was ideal for use as residential, commercial and other alike projects in the future. Guidance derived from the case of “Land Acquisition Collector and others Vs. Mst. Iqbal Begum and others” (PLD 2010 Supreme Court 719) wherein it was held:

“The nature of land has been considered by taking into consideration its potentiality and locations. It is worth mentioning that the potentiality of land should not be determined merely at the time of issuance of notification under Section 4 of the Act but it should be also with reference to the use to which land is reasonably capable of being put in the future. Reference in this regard can be made to Market Committee vs. Rayyat

Ali (1991 SCMR 572). Here at this juncture we may like to point out that the main object of Land Acquisition Act is to provide complete indemnity to the owner and no property is to be acquired without proper and adequate compensation. (Chairman, Serampore Municipality vs. Secretary of State for India AIR 1922 Calcuta 386, West Pakistan WAPDA vs. Hiran Begum 1972 SCMR 138).”

10. The Collector Land Acquisition while assessing the rate of compensation, did not take into account aboverferred future potentiality and prospects of the land and had arbitrarily fixed the rate of compensation. Had the property of objectors not been acquired, it would have yielded much more to them in the days to come. Therefore, the rate of compensation so awarded by the collector was squarely unjust and inadequate which has rightly been enhanced by the learned Referee Court. Reliance in this regard is placed on the reported case of *“Government of Pakistan through Military Estate Officer, Abbottabad and another Vs. Ghulam Murtaza and others”* (2016 SCMR 1141).

11. Now adverting to the question, as to whether the amount so enhanced by the learned Referee Court was adequate or otherwise? As mentioned above, the land under acquisition was an ideal location for commercial and residential activities. The objectors relied upon certain mutations and claimed that the value of the acquired property was not less than Rs. 2500,000/- per Marla, however, their contention was not acceded to by the learned Referee Judge on the ground that mutations so relied by the objectors were in respect of commercial land and the rates of land sold for residential purposes were less. On the other hand, the respondents have stressed that adjacent land had been acquired through Award No. 179 dated 28.11.2005, therefore, the objectors herein were entitled to the compensation at the same rates. In order to resolve the controversy, learned Referee Court also appointed local commission on 11.11.2019 who submitted his report CW-1/1. As per report of local commission, the price of the land at the time of its acquisition was in between Rs. 500,000/- to 700,000/- per Marla. The learned Referee Court rejected the report of local commission on the ground that local commission had fixed exaggerated compensation for the acquired land.

12. In the cases of acquisition of lands, the value in general can also be measured by a consideration of the prices that have been obtained in the past for lands of similar nature, quality and in similar positions, and this is what must be meant in general by 'the market value' in Section 23 of the Land Acquisition Act, 1894 (the Act). No doubt that the nature of land acquired from appellants, as mentioned in the Award, was of different kinds, but said nature was only for the purpose of maintaining the record of rights and same does not mean that the said land was not usable for any other purposes. Sometimes it happens that the land to be valued possesses some unusual, and it may be bearing unique features, as regards its position or its potentialities. In such a case the Collector in determining its value will have no market value to guide him, and he will have to ascertain as best he may from the material before him, what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with those particular potentialities. For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time of acquisition but also by reference to the uses to which it is reasonably capable of being put in the future;

and in this regard some factors which the Referee Court has to be kept in mind in re-assessing the compensation are listed below:

- a. market value of the acquired land at the prevalent time and its potential;
- b. its likelihood of development and improvement;
- c. a willing purchaser would pay to a willing buyer in an open market arms-length transaction entered into without any compulsion;
- d. loss or injury occurred by severing of acquired land from other property of the land owner;
- e. loss or injury by change of residence or place of business and loss of profit;
- f. delay in the consummation of acquisition proceedings and;
- g. peculiar facts and circumstances of each case.

13. In addition to above, according to Section 23 of the Land Acquisition Act, 1894, firstly the rate of compensation is to be determined on the basis of market-value of the Land at the date of taking possession of the land. In the instant case, the compensation determined by the learned Referee Court was based on compensation fixed through Award No. 179, because of the fact that land acquired through said award was falling adjacent to the acquired land, had same potentiality as well as was of almost same kind. However, since the award No. 179 was announced in the year 2005, whereas award in this case has been announced on 19.05.2016, therefore, while slightly increasing the price, the learned Referee Court fixed Rs. 250,000/- per Marla as price of the acquired land. There is no cavil with the proposition that the acquired land was a most suitable place for its use in commercial and residential purposes. According to Section 23 of the Land Acquisition Act, 1894 firstly the rate of compensation is to be determined on the basis of market-value of the Land at the date of taking possession of the land. It is very important to note that in the Land Acquisition Act, 1894, for the payment of price of land to affected landowners, the word "COMPENSATION" is used and not the word "MARKET VALUE", however,

compensation should not be less than the market value. There is much difference between the terms 'compensation' and 'market value'. The market value is a highest price for which a property is exchanged on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction wherein the parties acted knowledgeably, prudently, and without compulsion. Whereas, the term '*compensation*' though used in various sections of the Land Acquisition Act, 1894 but has not been defined therein. As per dictionary meaning the compensation means "*something, typically money, awarded to someone in recognition of loss, suffering, or injury*" or "*money that is paid to someone in exchange for something that has been lost or damaged or for some problem*". As the property was acquired against the will of the owner, therefore, in order to eliminate the sense of deprivation and discrimination, the affected owner is compensated with the amount not less than market value prevailing at the time of taking over possession. It would be injustice with the landowners if the amount of compensation is less than market value and similarly it would be unjust to the public interest, if he is awarded more, as it is based on the principle 'quid pro quo'. Therefore, in order to maintain equilibrium between

individual interest of an affected landowner and general interest of public at large, the compensation should always be that amount where a seller can willingly sell his land without a slight feeling of any remorse. In the case of *Mst. Iqbal Begum (supra)* the august Supreme Court further held that the principles laid down for determination of compensation reflect anxiety of law-giver to compensate those deprived of property adequately enough so as to be given gold for gold and factors have to be taken into consideration i.e. the size and shape of the land, the locality and its situation, the tenure of property, the user, its potential value, and the rise or depression in the value of the land in the locality and even in its near vicinity. Further Guidance in this regard is derived from the case of ***“Province of Punjab vs. Jamil Ahmad Malik”***(2000 SCMR 870), which provides:

“10. The cardinal principle for ascertaining the value of the land under acquisition is to find out the price acceptable to a willing seller from a willing purchaser. Attending this principle, we notice that the rate of compensation given by the Referee Court being much less to that of the

claim made by the owners was not exorbitant and, therefore, taking the relevant factors into consideration, the rate of compensation awarded by the Referee Court was fair.”

This view was further reaffirmed by the august Court in the case of *“Land Acquisition Collector, Abbottabad and others Vs. Gohar-ur-RehmanAbbasi”*(2009 SCMR 771).

14. The evidence produced by the respondents through their representative i.e. Bilal Afzal (RW-1), reveals that they had been of the view that the price of the land determined through Award No. 179 dated 28.11.2005 was adequate and just for the purpose of determination of compensation in the instant case. The compensation awarded to the land owners in said Award was finally enhanced by the learned Referee Court to Rs. 70,00,000/- per Kanal and the appeals filed against such enhancement had also been dismissed by this Court. During course of hearing of these connected appeals, it was also brought into notice of the Court that through Award No. 258 dated 16.05.2016, the adjacent property was acquired for the purpose of extension of PMA wherein this Court, vide its judgment dated 25.09.2023, has modified the Award by

enhancing the amount of compensation to Rs. 60,00,000/- Per Kanal. Therefore, there are now two parameters before this Court for determination of the fair compensation of acquired land i.e. the property acquired through Award No. 179 dated 28.11.2005 as well as property acquired through Award No. 258 dated 16.05.2016. This Court is of the view that Award No. 179 had been announced much prior to the announcement of present Award. It is also not clear from record that the nature of property, acquired through Award No. 179 was similar to that acquired through Award No. 259. However, Award No. 258 has been announced on 16.05.2016 while present Award was announced on 19.05.2016. In both the Awards, the property has been acquired for the purpose of extension of PMA and the property also falls in Mauza Nawanshehr Shumali, therefore, the compensation already determined by this Court, while deciding objections petitions pertaining to Award No. 258, seem to be appropriate, in view of the observation of the worthy Apex Court in the case of *“Land Acquisition Collector, G.S.C., N.T.D.C., (WAPDA), Lahore and another Vs. Mst. Surraya Mehmood Jan”* (2015 SCMR 28), wherein it was observed:

“While undertaking this exercise, contemporaneous transactions of the same, adjoining or adjacent as well as the land in the same vicinity or locality; in dissenting precedents, may be taken into account. An award of compensation of a similar, adjacent, adjoining land or in respect of the land acquired in the same vicinity or locality cannot be ignored. The classification of the land in the Revenue Record cannot be the sole criteria for determining its value and its potential i.e. the use of which the said land can be put, must also be a factor. In this behalf, the use of the land in its vicinity needs to be examined.”

15. Since the property acquired through Award No. 258 and Award No. 259 is almost same chunk of land and has not only been acquired for similar purpose, but also at the same time, therefore, the compensation of the land acquired through Award No. 258 would be

appropriate compensation to the land owners, whose land has been acquired through Award No. 259. Accordingly, the amount of compensation for the land acquired through Award No. 259 dated 19.05.2016 is also fixed as Rs. 60,00,000/- per Kanal.

16. The learned Referee Court also granted 25% compulsory acquisition charges to the land owners, to which no exception could be taken by this Court and to said extent, judgment of learned Referee Court is upheld, however, learned Referee Court has deprived the land owners from 6% interest, by misinterpreting Section 28 of the Land Acquisition Act, 1894 (as amended by the KP Land Acquisition Amendment Act, 2001). The impugned judgment of the learned Referee Court, to that very extent is not maintainable on two counts, i.e. the amendment in Section 28 of the Land Acquisition Act, 1894, introduced through Khyber Pakhtunkhwa, Land Acquisition Amendment Act, 2001, would only be applicable to the provincial matters, while in the instant case, the property has been acquired by the central Government, therefore, said amendment would not apply to this case and secondly, as per amendment introduced in Section 28 by the Province of Khyber Pakhtunkhwa, the grant of 6%

interest is not barred, rather it has been left open for the Referee Court to fix rent on the enhanced compensation as per market rate and where no evidence is available for fixation of fair market rental value of the land, then an additional sum equal to 6% per annum on unpaid compensation should be granted to the land owners, keeping in view the hardships suffered by a landowner, whose land has been acquired and the fair compensation was not paid to him, despite taking possession from him. This issue has elaborately been dealt with and decided by the honourable Supreme Court of Pakistan in the case of ***“Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Yousaf Khan and others”***(**2022 SCMR 1836**), by holding that;

“The 2001 amendment in section 28 of the Act, as it is evident from the recital in the preamble to the amending Ordinance, was made by the Legislature of the Province of Khyber Pakhtunkhwa in pursuance of the judgment of the Shariat Appellate Bench of this Court delivered in the Aslam Khaki case. Even though the said judgment has been set aside by this Court in review but it does not affect the powers of a competent Legislature to make any amendment in the

relevant law(s) on its own, either in the light of what was observed in that judgment or for any other reason. The Legislature of the Province of Khyber Pakhtunkhwa has exercised this power by making amendment in section 28 of the Act in pursuance of the said judgment of this Court. As the amendment has been made in pursuance of a judgment of this Court, no source other than that judgment can better shed light and explain the scope of the discretion of the Referee Court in determining the amount under the amended section 28 of the Act.

7. *Reading of the Aslam Khaki case shows that this Court recognised the injustice done to and the hardships suffered by a landowner whose land is acquired and the possession thereof taken over without paying him its fair price/compensation. The Court endorsed the findings of the Federal Shariat Court with regard to the language used and the manner specified for imposing an additional amount over the original awarded amount, but emphasised it also that a landowner deprived of the possession of his land without payment of fair price compensation should be compensated in some way or the other. In the judgment, one of the modes proposed was that a*

landowner, the possession of whose land is taken over without paying him its fair price/compensation, is entitled to receive a rent of its land for the period commencing from the date of possession to the date of the payment of the price/compensation. The court in Aslam Khaki case further observed that the said rent should not be less than the fair market rent in the relevant period or an amount equal to 8% per annum of the awarded amount, whichever is higher, from the date of taking possession to the date of actual payment of the price/compensation to him. We may clarify here that an amount equal to 8% per annum of the awarded amount was mentioned in the Aslam Khaki case according to the percentage mentioned in section 34 as it was then in force in some of the Provinces of Pakistan.

The preamble to the amending Ordinance 2001 which refers to the judgment of this Court delivered in the Aslam Khaki case and the above quoted observations made in that case were not brought to the notice of this Court at the hearing of the Misal Khan case, and thus the Court decided that under the amended section 28, a Referee Court is no more bound by any fixed rate of interest and can grant interest at

any reasonable rate. It should have been "rent" instead of "interest". We, therefore, modify the interpretation put to the amended section 28 of the Act in the Misal Khan case to that extent by holding that under section 28 of the Act, a Referee Court can, and should, add the sum of actual fair market rental value of the land found acquired unpaid (or deficiently paid) if it is proved by evidence on record or, in absence of such evidence, a sum equal to 6% per annum of the enhanced sum of compensation as the minimum rental value of that land, from the date of taking possession of the acquired land to the date of actual payment of the enhanced price/compensation to the landowner."

17. In the light of verdict of the apex Court, even under amended Section 28 of the Act, by the Province of Khyber Pakhtunkhwa, the landowners would either be entitled to fair market rental value on the enhanced compensation or in case there is no evidence to determine fair market rental value of the acquired land, then the land owners would be entitled to receive minimum 6% per annum of the enhanced amount as rental value of that land.

18. So far as the appeals filed by the respondents are concerned, the respondents though prayed for setting aside

the judgment of learned Referee Court and upholding the compensation awarded to the landowners through award, but as discussed earlier, during course of evidence before the learned Referee Court, the respondents themselves relied and prayed for fixation of compensation of the acquired land as per compensation fixed in Award No. 179 dated 28.11.2005. Award No. 179 dated 28.11.2005 was modified by and the compensation awarded through said Award was enhanced to Rs. 70,00,000/- per Kanal. The respondents failed to prove that the compensation assessed in Award No. 259 dated 19.05.2016 was fair and just and in the light of findings rendered by this Court in the preceding paras, their appeals have become infructuous.

19. In the light of what has been discussed above, this and the connected appeals filed by the landowners are partially accepted and the amount of compensation fixed through Award No. 259 dated 19.05.2016 is enhanced to Rs. 60,00,000/- Per Kanal (at flat rate, irrespective of kind of land), together with 25% compulsory acquisition charges and 6% annual interest from the date of award till payment of entire amount to the landowners. Appeals filed by respondents/acquiring department merit dismissal and thus their appeals stand dismissed.

Announced
18.04.2024
(Tufail.)

J U D G E

(SB: Hon'ble Mr. Justice Muhammad Faheem Wali)