

**Judgment Sheet****IN THE PESHAWAR HIGH COURT, PESHAWAR,**  
**JUDICIAL DEPARTMENT.****RFA No. 155-P/2016****Riaz Ahmad Khan...vs..District Land Acquisition  
Collector, Mardan etc.****JUDGMENT**Date of hearing..... 23.10.2017.....

Appellant(s) by Mr. Abdul Sattar Khan, Advocate.

Respondent(s) by Muhammad Riaz, AAG.

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**ROOH-UL-AMIN KHAN, J:-** The District Land Acquisition Collector, Mardan acquired a piece of land situated in Mauza Khawo, District Mardan @ Rs. 1506/ per marla with 15% compulsory acquisition Charges for the purpose of Mardan-Swabi by-pass Road, vide Award No. 39 dated 04.02.2009. The land owners were not satisfied by the compensation awarded to them, therefore, they filed reference before the Referee Court, Mardan, on the ground that the price of the suit land was more-than the assessed price as well as the market value of the acquired land is not less-than Rs. 70,000/- per marla. The learned Referee Court after recording pro & contra evidence of the parties in support of their claim decided the reference on 14.4.2016 and enhanced the compensation amount to the tune of Rs.

15,000/- per marla with 15 % compulsory acquisition charges and 6 % interest from the date of acquiring of possession till final payment.

2. The appellants in the instant as well as in the connected appeals bearing RFA No. 156-P/2016, RFA No. 187-P/2016, whereas the Pakhtunkhwa Highways Authority in the connected appeal Nos. (i) RFA No. 184-P/2016 (ii) RFA No. 185-P/2016 and (iii) RFA No. 186-P/2016 have called in question the above said judgment dated 14.4.2016 rendered by the learned Referee Court, Mardan. The formers have prayed for further enhancement of the compensation, whereas the latter have sought reduction of the compensation to the level already assessed by the land Acquisition Collector, on the basis of one year average. This common judgment shall decide the instant regular first appeal as well as the above mentioned connected appeals as all are emanating from one and the same judgment. For the sake of convenience the land owners here-in-after shall be referred to as “**appellants**”, whereas the acquiring department as “**respondents**”.

3. Arguments of learned counsel for the parties heard at length and record perused with their valuable assistance.

4. The appellant in support of his claim produced Jehanzeb Khan Patwari Halqa Mauza Khawo, Mardan who

produced periodical record for the year 2007-08, as Exh.PW-1/1, mutation No. 58 dated 20.2.2009 as Exh.PW-1/2 vide which the acquired land has been transferred to the respondents. He also produced mutations No. 170 dated 5.5.1998 and mutation No. 171 as Exh.PW-1/5 and Exh.PW-1/6 respectively whereby the land has been mutated in Mauza Ghala Dher @ Rs. 1,99,000/- per marla. This witness has further stated that Mahal Ghala Dher consist of 06 mauza Jaat viz (i) Mauza Khawao, (ii) Ghala Dher, (iii) Bago Banda, (iv) Khat, (v) Chowki and (vi) Pangdar. He further stated that in Mauza Khawo a township by the name and style of “ Green Acres” is in progress which is situated adjacent to the acquired land. He admitted that the rate of compensation of the acquired land has been fixed on the basis of one year average. He also stated that there is a mettaled road in the disputed land being used by the general public for access to the village. PW-3 Pir Kamil Shah, head Clerk Land Acquisition Collector, Mardan in his statement, produced the copy of impugned award, however stated that in Mauza Khawo a mega residential Township namely “Green Acre” is in progress at a short distance from the acquired land. **PW-4, Zahoor**, the special attorney of appellant recorded his statement wherein he has stated that the acquired land is situated in mid of Abadi of Mauza Khawo and Green Acre township Mardan. All the basic

facilities like sui gas, electricity, telephone and water connections are available in the vicinity. Likewise Government College for boys, higher secondary school for boys and girls, hospital and commercial property are situated at a very short distance from the acquired land. The acquired property is linked to residential area through a metalled road i.e. Toru Mayar and Nowa Kallay road. Further stated that the acquired land is fit for all kinds of residential as well as commercial abadi, because adjacent to the same on one side Green Acre Township while on the other side Sheikh Maltoon Town are situated. In his cross examination this witness has deposed that main Swabi Mardan road is situated adjacent to the acquired land. There are stocks of Bhatta Khasht, Saw mills etc. and other commercial abadi situated near the acquired land. It is lying at a distance of about 200 feet from the above mentioned commercial abadi. In rebuttal the respondents produced Usman Nabi as RW-1, who produced the relevant official record of the acquired land. In cross examination, he has categorically stated that property under acquisition starts from main Nowshera road which passes through different villages and road. He deposed that the land under acquisition is situated on the bank of road which has more potential as compared to agricultural property. He further stated that the respondents failed to bring on record any

documentary evidence showing less market value as compared to the one which has been produced by the appellants in their evidence. He further stated that the acquired land is situated on main Nowshera road known as Mardan Swabi Bypass road and the same is surrounded by every kind of commercial as well as residential property, wherein different petrol pumps, CNG pumps, industrial estate and Sheikh Maltoon Town are situated where the rate of plots are much higher. Further stated that the proposed road is passing through Behram Khan Killi, Toru, Mauza Khawo, Hoti, Mohib Banda, Mayar, Shamatpur, Manikhel and other villages.

5. Over and above, is the statement of Syed Shams-Ul-Hadi, Advocate (Local Commission), who has stated that the acquired land is surrounded by Green Acres Township on one side and Mardan Model Town is on the other side as well as the same is situated at a very short distance from Mardan-Nowshera GT Road and also Sheikh Maltoon Town, where all the basic facilities of life are available. The Police Station Toru and Police Station Sheikh Maltoon are lying at a short distance from the acquired land. The mega park by the name of Mardan Sports Complex is also established at a very short distance from the land under acquisition. The Mardan Medical Complex is also situated near to the acquired land.

6. From the unrebutted evidence produced by the appellants, it is clear that the acquired land starts from main Swabi Nowshera bypass road, adjacent to it a Mega residential township by the name of "Green Acre" is established, where number of houses have been built up and all the basic facilities are available there. The Mardan Sport Complex, wedding hall, petrol and CNG filling stations, Agriculture University, Abdul Wali Khan University and Bacha Khan Medical College, Sheikh Maltoon Township are situated in close proximity of the acquired land, where all kind of commercial markets are available. It is also pertinent to mention here that adjacent to the property under acquisition, some land of Mauza Behram Kalay has been acquired by the department through Award No. 36 dated 02.02.2009, wherein the compensation amount was enhanced by the learned Referee Court from Rs. 2318/- to Rs. 100,000/- per marla with 15% compulsory acquisition charges and 6% simple interest, followed by further enhancement to Rs. 1, 25, 000/- by this Court in appeal. The availability of all the basic civic facilities in shape of Petrol/CNG filling stations, hotels, hospital, townships, schools and colleges, Gas, Electricity, clearly speak about the present and future potentiality of the acquired land. The assertion of appellants regarding location of the land is further supported by the statement of local commission,

though not relied upon by the Referee Court with regard to determination of market value of the land under acquisition. The sketch being prepared by him annexed with his report suggests that the acquired land is situated at prime location of Mardan duly, surrounded by roads, mega residential projects, Colleges, schools, Mardan Medical Complex, petrol /CNG, Bacha Khan Medical College, Sheikh Maltoon Town. Similarly for construction of Mardan Sports Complex in the said Mauza some property was acquired by the respondents through Award No. 48 dated 15.2.2010 which too was challenged before the Referee Court which was allowed vide judgment dated 20.12.2012 and the compensation amount was enhanced from Rs. 2943/- to Rs. 100,000/- per marla. But the learned Referee Court while determining the amount of compensation in the instant case has almost failed to appreciate the principle contemplated in Section 23 of the Land Acquisition Act, 1894, wherein a proper mechanism has been provided for the purpose of assessment of the market value. The learned counsel for appellants drew the attention of this Court to a judgment rendered by this Court in the aforesaid award, whereby the compensation amount was enhanced from Rs. 100,000/- to Rs. 125,000/- per marla with 15% compulsory acquisition charges and 6 % simple interest from the date of acquisition till the final payment.

7. No doubt, that the rate of compensation assessed by the collector for the land acquired in one award shall not be made the basis of the land acquired through another award, but for determination of fair rate of the land under acquisition, the peculiar facts and circumstances of each case have to be considered separately. The land acquired through the aforesaid Award No. 48 and the land under acquisition through this Award are situated adjacent to each other having same characteristics, therefore, in such a situation, the compensation awarded to the adjacent land owners cannot be ignored.

8. It is settled law that the best mode of determination of the market price would be to take into consideration the instance of sale of adjacent land made shortly before or after the notification under section 4 of the land Acquisition Act, 1894. In the case in hand, it transpired from the un-rebutted evidence on record that the acquired property is situated at prime location of Mardan which is adjacent to the land acquired through Award No. 48 dated 15.2.2010, where the price of land has been assessed by this Court in RFA No. 119/2013, to the tune of Rs. 125,000/- per marla.

09. The controversy with regard to the fair compensation was raised before the august Supreme Court



of Pakistan in case titled **Murad Khan through his widow and 13 others...VS...Land Acquisition Collector Peshawar and another ( 1999 SCMR 1467)** wherein after scanning the entire case law on the subject, the august Court was pleased to observe that the schedule of average price for four years or for that matter even of one year is not the sole criterion for ascertaining the amount of compensation, rather the material brought on the record with regard to location, potentiality and market value of the acquired land is also to be considered. It was emphasized that the best method for working out the market value would be the practical one, viz a willing purchaser would pay to a willing seller. According to Section 25(3) of the Land Acquisition Act, 1894, when the applicant has omitted for a sufficient reasons ( to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less-than and may exceed, the amount awarded by the Collector, whereas under section 25(1) of the Act, the Referee Court shall not award compensation in excess of claim of the land owners made in pursuance of notice under section 9 of the Land Acquisition Act,1894. Needless to say that burden always lies on shoulders of the Collector to prove service of notice and the penal clause No.2 of Section 25 can only be invoked if (i) the Collector proved the service of notice and (ii) when the applicant has refused

to make or has omitted without sufficient reasons to make such claim, which is obviously missing in this instant case. Hence, in view of the section *ibid*, the Court can award the amount of compensation over and above what has been claimed by the petitioners in a reference under section 18 of the Land Acquisition Act, provided sufficient material exists to justify the same. No doubt, the appellants have claimed an amount of Rs. 70,000/- per marla as market value of the acquired land, but the law is settled on the subject that while determining the price of compensation the Referee Court shall consider evidence on record and to see whether the Land Acquisition Collector has considered the nature, location and future potentiality of the land acquired, in addition to the one year average price. For determination of compensation the demand of the land owners would also be immaterial. The Courts are under legal obligation to determine the fair compensation irrespective of the claim of land owner as that may be less or exorbitant. I have not hesitation to hold, even on cost of repetition, that the Court can fix the compensation notwithstanding the claim of land owner in reference under section 18 of the Land Acquisition Act, 1894 or during trial before the Court, provided sufficient material exist to justify the same. Wisdom may be derived from the judgment of this Court rendered in the case of **Sher**

**Muhammad Khan and 4 others...VS... Land Acquisition Collector ( PLD 1978 Peshawar 138).**

10. Thus, keeping in view the nature, location, market value, rate in the close proximity of land and deriving wisdom from the principle enunciated by august Supreme Court of Pakistan in cases titled, **(i) Province of Punjab...VS... Jamil Ahmad Malik (2000 SCMR 870), (ii) Muhammad Saeed and others...VS...Collector Land Acquisition and others ( 2002 SCMR 407), (iii) Nisar Ahmad Khan ...VS...Collector Land Acquisition Swabi and others ( PLD 2002 SC 25) and (iv) Province of Punjab through Land Acquisition Collector and others...VS...Begum Aziza (2014 SCMR 75)**, it can be safely held that the owners of the land acquired through Award No. 39 dated 04.2.2009 are entitled to be paid compensation @ Rs. 125,000/- per marla with 15% compulsory acquisition charges and 6% simple interest from the date of acquisition till final payment.

11. Resultantly, the appeals bearing (i) RFA No. 155-P/2016 titled Riaz Ahmad Khan..vs..District Land Acquisition Collector (ii) RFA No. 156-P/2016 titled Muhammad Younas Khan and another...vs...District Land Acquisition Collector, Mardan and (iii) RFA No. 187-P/2016 titled Kiramat Ullah etc...vs... District Land

Acquisition Collector Mardan, are allowed. The impugned judgment passed by the learned Referee Court/Additional District Judge-VIII, Mardan dated 14.4.2016 is modified to the extent of compensation amount from Rs. 15,000/- per marla to Rs. 1,25,000/- per marla with 15% compulsory acquisition charges and 6 % interest from the date of acquiring possession till final payment, whereas rest of the appeals bearing (i) RFA No. 184-P/2016 titled Pakhtunkhwa Highway Authority through Managing Director & another...vs...Younas Khan and another (ii) RFA No. 185-P/2016 titled Pakhtunkhwa Highway Authority through Managing Director & another ...vs... Riaz Ahmad Khan and (iii) RFA No. 186-P/2016 titled Pakhtunkhwa Highway Authority through Managing Director & another ...vs... Kiramat Ullah Khan etc. stand **dismissed**.

*Announced on;*  
*23<sup>th</sup> of October, 2017*  
*\*Zarshad\**

*(Approved for reporting)*

**JUDGE**