

Stereo. HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT,
MULTAN BENCH MULTAN
(JUDICIAL DEPARTMENT)

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RFA No.171/2016.

Malik Nazar Hussain.

Versus

Multan Development Authority, etc.

JUDGMENT

Date of hearing: 14.11.2024

Appellant by: Malik Javed Akhtar Wains and
Muhammad Irshad Khan, Advocates.

Respondents by: Syed Shahid Hussain, Advocate.

ASIM HAFEEZ, J. These are three regular first appeals, bearing ***R.F.A. No.224/2018, R.F.A. No.171/2016 and R.F.A. No.132/2015*** [collectively referred as ‘Appeals’ and individually identified with specific number(s)], each one of which is against the decision(s) / judgment(s), separately passed by the Referee Court, in exercise of jurisdiction extended under section 18 of the Land Acquisition Act 1894 (the ‘**Act, 1894**’). Disputes are restricted to the extent of quantum of the compensation awarded, in lieu of compulsory acquisition of land, subject to single Award. In wake of commonality of the issues, legal and factual, all these appeals are decided through instant single decision.

2. By and large, the facts bear similarity, differing to the extent of quantum of the compensation awarded to each of the landowner(s). Land in question was

situated in *Mauza Taraf Ravi, Multan* which was acquired for the purpose of developing Fatima Jinnah Town Phase-1, Scheme, Multan launched by Multan Development Authority ('Authority'). Notification under section 4 of the Act, 1894 was issued on 28.07.2004 and same was gazetted on 05.08.2004. Notifications under section 6 and 17(4) of the Act, 1894 were issued on 28.06.2006 and possession of the land was taken over and handed over to the Authority by 23.12.2006. Compensation of Rs.21,000 per Marla was determined for the land having residential character and Rs.10,000/- per Marla for land bearing agricultural character. Award was announced on 28.04.2008. Compensation awarded and variation therein, subject matter of each of the appeals, are detailed hereunder,

	Compensation determined in terms of Award	Compensation by the Referee Court
RFA- 224/2018	4K 6M – Rs.21,000/- Per Marla [treating character of the land as residential] 8K 14M – Rs.10,000/ Per Marla [treating land as agricultural]	Rs.38,500/- Per Marla [treating 13-Kanal of land composite]
RFA - 171/2016	Rs.10,000/- Per Marla [Agriculture Land]	Rs.10,000/- Per Marla [no increase grated]
RFA - 132/2015	Rs.10,000/- Per Marla [Agriculture Land]	Rs.10,000/- Per Marla [No increase granted]

3. First, I take up ***RFA No.224 of 2018*** –[Appeal preferred by the Authority] -, which arose out of the judgment in Reference Application No.23/R of 2010. In Award, the compensation determined was Rs.21,000/- per Marla for land having residential character and Rs.10,000/- per Marla for land bearing agricultural character. Referee Court enhanced the compensation to Rs.38,500/- per Marla, treating entire land as residential, for the purposes of determining the compensation.

Submissions:

4. Learned counsel for the Appellant Authority contends that treating land alike, in contrast to having different features, is gross illegality. Adds that compensation was arbitrarily enhanced to Rs.38,500/- per Marla, without any justification and reasoning.

Conversely, learned counsel for the respondents submits that compensation cannot be determined simply upon considering the use of the land at the time of issuance of notification, but potentiality thereof has to be determined. Adds that sufficient evidence was produced to prove that parcel(s) of land were sold as residential, since 2001-2002. Adds that Referee Court had enhanced compensation in wake of huge potential value of the land, which falls within urban / municipal limits and purposely acquired for establishing housing scheme, which indicates its suitability-aptness for residential purposes. Adds that evidence produced regarding potential value of land remained un rebutted.

5. Heard and record perused –***RFA 224/2018.***

6. In terms of the Award, quantum of compensation for land used for residential purposes was valued at Rs.21,000/- per Marla and land under cultivation was valued at Rs.10,000/- Per Marla. I have examined the judgment by the Referee Court, which proceeded to enhance the rate of compensation in lieu of conspicuously established potentiality of the land in question. Land Acquisition Collector had treated subject land as partly residential and partly agricultural, which manifest that land could ably to put to use for residential purposes, irrespective of being used for agriculture purpose at the time of Notification. If part

of the land is classified as residential why cannot the land in vicinity / proximity thereto would be treated as residential, for computing fair amount of compensation. Scope and significance of ascertaining the potential value of the land, in the context of compulsory acquisition, under the principle of *eminent domain*, is well-established, jurisprudentially. Potentiality of the land includes land's future value, economic potential and probable use(s) thereof, which *inter alia* includes development prospects of the land, in near future. In the case at hand, subject land was acquired for residential housing scheme – which strongly suggests and implies that before identification of the land, sought to be acquired for residential purposes, it was surveyed and found fit for such purpose, because of various factors, one of which being its territorial footprint in urban / municipal limits – since part of it was treated as residential – or in close proximity thereof. And activities carried in the vicinity. It was not the case that purely / exclusively agricultural land was acquired, situated at some far-flung distance from city / urban limits. Hence, suitability and appropriateness of the land for housing scheme provides undeniable insight into its potential value. Section 23 of the Act, 1894 provides benchmark for determination of the potentiality of the land – and jurisprudence to that extent is well-settled. Guidance is solicited from the ratio settled in the cases of “SARHAD DEVELOPMENT AUTHORITY N.W.F.P. (NOW KPK) through COO/CEO(OFFICIO) and others. Vs. NAWAB ALI KHAN and others.” (2020 SCMR 265) and “PROVINCE OF PUNJAB through Land Acquisition Collector and another. Vs. BEGUM AZIZA” (2014 SCMR 75). All these factors were considered by the Referee Court, which reasoning is unexceptionable. I find no

reason to grant appeal of the Authority, which is, hereby, dismissed and decision / judgment of the Referee Court dated 07.04.2018 is affirmed.

RFA NO.132 OF 2015 & RFA 171 OF 2016

7. Separate parcel(s) of land are subject of each of these Appeals, but facts therein substantially overlap. Land subject matter of aforesaid Appeals was treated as agricultural and compensation of Rs.10,000/- per Marla was awarded in respect thereof. Landowners, aggrieved, submitted reference application(s), which were dismissed without granting any enhancement in the compensation, on the premise that no evidence was produced to prove that land of the landowner(s) acquired, was classifiable as residential land, instead it was labelled as agricultural. Referee Court observed that sale deeds produced for showing voluntary transactions between the willing buyer(s) and sellers were executed much after the issuance of notification under section 4 of the Act, 1894, and handing down of the Award. Referee Court further observed that landowners failed to bring any evidence on record to show that land in question fell within the municipal limits. In view of these facts, aforesaid Appeals are adjudicated.

Submissions.

8. Learned counsel for the appellants in aforesaid Appeals - ***RFA No.171/2018 and RFA No.132/2015*** - contend that Referee Court failed to appreciate the potential value of the land, having proximity to the area/land having all attributes/ features of an urban locality, besides being declared suitable for the development of Housing Scheme—an undisputed fact. Adds that land subject matter of ***RFA No.224 of 2018*** fell within same *Mauza Taraf Ravi, Multan*, where land of the present

appellants was situated, and the former was compositely treated as residential land and valued as such. Adds that land of the appellants is in close proximity thereto, and land collectively acquired would be put to use for establishing housing scheme. Submits that purpose for which land was acquired substantiates its potential value. Adds that appellants are entitled to similar treatment by fixing compensation at Rs.38,5000/- per Marla. Strength is drawn from the decision in the case of “Malik TARIQ MAHMOOD and others. Vs. PROVINCE OF PUNJAB and others.” (2023 SCMR 102).

9. Conversely, learned counsel for respondent Authority submits that no evidence was produced to justify the claim of enhancement. Adds that compensation was received without any objection and hence, no claim could be raised in terms of section 31(2) of the Act, 1894.

10. Heard. Record perused – ***RFA No. 132 of 2015 and RFA No. 171 of 2016.***

11. Purpose for which land was acquired and intended use thereof facilitates attributing predictability qua its potential value. Land in question was acquired for developing housing scheme, which manifest its suitability-cum-viability vis-à-vis for residential purposes. It is not disputed that land of the appellants fell in *Mauza Taraf Ravi*, wherefrom another parcel of land was acquired and assessed at Rs.38,500/- per marla for compensation payable to the landowner(s), whereby the Referee Court had treated the acquired parcel as residential, disagreeing with the classification by Land Acquisition Collector. If land in the vicinity was assessed in the context of having potentiality, whether is it fair to determine value of the land in the vicinity / proximity, differently. No special disability / disadvantage was

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attributed to the land of the appellants, except that it was used for agricultural purposes or was under cultivation. Here, the Referee Court had erred in failing to appreciate the concept of potential value. There is no evidence on the record to establish remoteness of land of the appellants from the reference point – housing project or land subject matter of **RFA No.224/2018**. Potential value *inter alia* includes prospective use to which said land could be put to. Unless upon comparative analysis, potentiality of the agricultural land is found on the lower side, in the context of the objective of the project, appellants / landowners could not be deprived of fair compensation of their land. No adverse evidence is available to disentitle the appellants of the enhanced quantum of value of their land. Determining the potential value of the land merely in the context of use thereof, contemporaneously, is wrong. In this context guidance is solicited from the ratio settled in “Malik TARIQ MAHMOOD and others’ (supra), relevant paragraph is reproduced hereunder,

“Before we enter upon considering the evidence adduced on the said issue, we deem it appropriate to state some of the principles on which compensation is required to be determined. Under section 23(1) of the Act, compensation is to be determined on the basis of the market value of the land at the date of publication of the notification under section 4 of the Act. The Court assessing compensation is required to take into consideration not only the present purpose or the present use to which the land is applied but also any other more beneficial purpose to which it might reasonably be put by the owner. Indubitably, it is true that regard can be had only to the existing conditions and what is likely to happen in reasonably near future and compensation cannot be fixed on the basis of what might happen in the dim and distant future. Where there is a reasonable possibility of the land being put to a more profitable use within a reasonable period the same cannot be ignored in assessing its value. Compensation has always to be determined by reference to the price which a willing vendor may reasonably expect to obtain from a willing purchaser. When the land possesses some unusual,

*special or unique features as to its location or potentialities, due weight must be attached to all these elements. After considering all the circumstances, the Court has to arrive at a fair estimate with reference to the surrounding circumstances and evidence in the case and to award a fair compensation on that basis. The Court further ought to be liberal in the sense that it should not be too meticulous or pedantic in dealing with the evidence. It is also true that an entry in the revenue record as to the nature of the land may not be conclusive. **If the land acquired is found to be useful both for agricultural or non-agricultural purposes, merely on the ground that it was used as agricultural land by the owner till the time of its acquisition, its potentiality as non-agricultural land cannot be ignored.***

[Emphasis supplied]

12. It is evident from the Notification under section 4 of the Act, 1894 that agricultural land was declared as situated within the municipal limits, which negates the position of the Authority and exposes the erroneousess of the decision of the Referee Court. I find no reason to remand the matter, when the potentiality of the land in the locality i.e. *Mauza Taraf Ravi* stood convincingly established with respect to the land, subject matter of ***RFA 224 of 2018***. Hence, petitioner cannot be discriminated or treated differently.

13. Objection that amount was received without any protest is misconceived. And even otherwise, section 31(2) of the Act, 1894 is neither attracted nor, in the facts and circumstances, be construed to the disadvantage of the appellants. In ***RFA No.171/2016*** Malik Nazar Hussain appeared as AW-1, who was cross-examined but not confronted with the receipt of payment to establish that money was received without any protest. AW-1, during cross-examination stated demand of seeking enhancement of compensation. Issue No.1 was framed regarding the maintainability of the reference application, which issue was decided against the

Authority due to failure to lead any evidence. It is notable that Authority submitted reply to the reference, wherein paragraph 7 of preliminary objections affirmed that owner was heard repeatedly, who requested for increase in the compensation but failed to produce documents. All this established that factum of unconditional receipt of consideration was not proved. Mere production of receipt showing receipt of money, without confrontation of the signatures to the appellant in question, would not attract penal consequence under second proviso of sub-section (2) of section 31 of the Act, 1894. Judgment in the case of “NATIONAL HIGHWAY AUTHORITY through Director. Vs. BASHIRAN BIBI and others.” (2024 MLD 1590) is distinguishable.

Likewise, in **RFA No.132/2015**, one of the appellant Malik Mehar Hussain appeared as AW-1, who was cross-examined but not confronted with the receipt of payment to establish that money was received without any protest. RW-1 was the alleged receipt of payment, whereupon signatures / thumbmark of said witness was not confronted or shown. Signatures of other landowners were not alleged at all. Issues No.1 and 2 were framed regarding the maintainability of the reference application, which issues were decided against the Authority due to failure to lead any evidence. It is notable that Authority submitted reply to the reference, wherein paragraph 7 of preliminary objections affirmed that owner was heard repeatedly, who requested for increase in the compensation but failed to produce documents. Benefit extended to the landowners in **RFA No.224/2018** cannot be denied to the appellants, whose case is substantially the same.

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RFA No.132/2015.

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14. In view of the above, Appeals bearing ***RFA No.171/2016 and RFA No.132/2015*** are allowed, and quantum of compensation with respect to the land(s), subject matter thereof, is enhanced to Rs.38,500/- per Marla for the land(s) in both Appeals – each of the appellants are entitled to receive enhanced compensation in lieu of their respective parcels of land(s) acquired. Appellants of aforesaid Appeals shall also be entitled to 15% compulsory acquisition on the amount of enhanced compensation and compound interest of 8% per annum from the date of taking of possession to the date of deposit / payment under section 28 of the Act, 1894, at the enhanced rate of compensation of the land(s), respectively. Amounts received by the appellants, so far, would accordingly be adjusted before making payments in terms of this judgment.

R.F.A. No.224/2018 is dismissed.

(ASIM HAFEEZ)
JUDGE

Announced and signed in open Court on **28.11.2024.**

JUDGE

Approved for reporting.

JUDGE

Imtiaz Nasir