

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT, BAHAWALPUR**  
**BENCH, BAHAWALPUR**  
**JUDICIAL DEPARTMENT**

**RFA No.47 of 2017/BWP**

**Federation of Pakistan through Military Estates  
Officer, Multan Circle Multan & another**  
**Versus**  
**Sahibzada Dawod Khan Abbasi & others**

**J U D G M E N T**

Date of hearing: 08.06.2023.  
Appellants by: Mr. Tahir Mehmood Mufti, Deputy Attorney General.  
Rai Mazhar Hussain Kharal, Assistant Advocate General.  
Respondents by: M/s Malik Imtiaz Mehmood Awan and Dr. Malik Muhammad Hafeez, Advocates.  
Ms. Rukhsana Hanif, Advocate in RFA Nos.26, 27 & 60 of 2017.

**MUHAMMAD SAJID MEHMOOD SETHI, J.-** This consolidated judgment shall also decide connected appeals i.e. RFA Nos.19, 20, 21, 22, 25, 26, 27, 28, 35, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 & 60 of 2017/BWP, as common questions of law and facts are involved in these cases.

2. Through instant appeal, appellants have called into question consolidated judgment and decree dated 25.02.2017, passed by learned Senior Civil Judge, Bahawalpur, whereby Reference Applications filed under Section 18 of the Land Acquisition Act, 1894 (“**the Act of 1894**”), by respondents, were partly accepted and they were held entitled to get the value and price of acquired property @ Rs.15,000/- per Marla, along with compensation as per their legal share from the acquired costs of building which was fixed at Rs.2,50,00,000/- instead of one crore, compulsory charges of acquisition @ 15% and compound interest @ 8% upon the enhanced value from the

date of award till its payment. Appellants have sought restoration of award dated 12.12.1998 announced by the Land Acquisition Collector / Assistant Commissioner, Bahawalpur. Respondents herein are also appellants in cross-appeals, which are seeking enhancement in the quantum of price and value of the property acquired.

3. Brief facts of the case are that respondents are legal heirs/ descendants of late Sir Sadiq Muhammad Khan Abbasi, the Ameer of Bahawalpur and inherited moveable & immovable property (urban & rural) in proportion of their shares in accordance with law of *Sharia*, declared and affirmed by Hon'ble Supreme Court of Pakistan. The Land Acquisition Collector, Bahawalpur issued Notification under section 4 of the Act of 1894 dated 12.05.1997 to acquire land measuring 95 Acres, 2 Kanals & 2 Marlas situated in Mouza Dera Izzat, Tehsil & District, Bahawalpur known as *Noor Mahal*. Ultimately, award was announced on 12.12.1998, whereby price of land was fixed as Rs.9,33,707.20 per acre i.e. Rs.5,835/- per Marla, cost of building as Rs.1,33,58,000/-, cost of fruit trees as Rs.7,82,470/-, cost of non-fruity trees Rs.5,10,243/- and 15% compulsory acquisition chares. Objections were filed, but same were turned down. Respondents challenged the award through Reference Applications under Section 18 of the Act of 1894 before Referee Court, which were contested by appellants by filing written replies. Out of divergent pleadings of the parties, learned Referee Court framed following issues: -

#### **CONSOLIDATED ISSUES:**

1. What was the market value of suit property at the time of its acquisition by respondents? OPP (Dawod Muhammad Khan)
2. What was the market value of suit property at the time of its acquisition? OPP (Mst. Zahra Abbasi)

3. What was the market value of suit property at the time of its acquisition by respondents? OPP (Sahibzada Khalif Abbasi)
4. What was the market value of suit property at the time of its acquisition? OPP (Begum Kathrine Abbasi)
5. What was the market value of suit property at the time of its acquisition? OPP (Sahibzadi Sofia Abbasi)
6. Whether the assessment of the valuation made by Acquiring Collector is very low as compared to the market value which is not less than one lac per Marla? OPP (Sahibzada S.M Abbasi)
7. Whether the factum enumerated under section 3 of the Land Acquisition Act was not applied by Acquiring Collector while making assessment of the value of Noor Mahal, if so, its effects? OPP (Sahibzad S.M Abbasi)
8. Whether the assessment of the valuation made by Acquiring Collector is very low as compared to the market value which is not less than one lac per Marla? OPP (Sahibzada Amin-ur-Rasheed Abbasi)
9. Whether the factum enumerated under section 3 of the Land Acquisition Act was not applied by Acquiring Collector while making assessment of the value of Noor Mahal, if so, its effects? OPP (Sahibzada Amin-ur-Rasheed)
10. What was the market value of suit property at the time of its acquisition? OPP (Sahibzada Saeed-ur-Rasheed Abbasi)
11. What was the market value of suit property at the time of its acquisition by respondents? OPP (Sahibzadi Nasreen Abbasi)
12. What was the market value of suit property at the time of its acquisition by respondents? OPP (Mst. Iqbal Abbasi)
13. Whether the petitions is not maintainable? OPR
14. Relief.

After recording evidence and hearing arguments from all sides, learned Referee Court, vide judgment dated 14.12.2010, held respondents entitled to compensation of their enhanced share of acquired land @ Rs.3000/- per Marla in addition to that the respondents were entitled to get compensation as per their legal share from the acquired costs of building which was enhanced to rupees one crore, they were also entitled to compulsory charge of acquisition @ 15% and compound

interest @ 08% per annum upon the enhanced amount. Feeling aggrieved, respondents approached this Court by filing various appeals, which were decided vide judgment dated 04.10.2016, whereby order of learned Referee Court was set aside and Reference Applications were remanded for decision afresh after hearing the parties and perusing the documents brought on record as well as oral evidence of the parties. In post remand proceedings, learned Referee Court partly accepted the Reference Applications in the terms narrated in preceding paragraph, vide judgment dated 25.02.2017. Hence, this and cross-appeals.

4. Learned counsel for appellants submits that respondents remained fully engaged throughout the acquisition proceedings, represented -through their counsel, and objections submitted were thoroughly adjudicated upon by the Acquisition Collector after hearing them at length, thus, Reference Applications before Civil Court were not maintainable. He adds that respondents received the amount of compensation as per their share, calculated as per the criteria laid down in the Act of 1894, and were fully satisfied with quantum of compensation proceedings as well as award. He contends that enhanced amount @ Rs.15,000/- per Marla, increase in costs of building, compulsory acquisition charges and compound interest are very high, which determination otherwise was not supported by valid lawful reasons. He argues that at the time of pronouncement of award, landowners were present and none of them objected to the amount of the compensation and received the same without protest, which even otherwise, was adequate in the context of the peculiar description of the property, *Noor Mahal*, with low saleable value. He further submits that the Referee Court has not rightly appreciated the material aspects of the matter and

evidence brought on record, hence impugned judgment and decree is unsustainable in the eye of law.

5. Conversely, learned counsel for respondents submits that learned Referee Court fully acknowledged in the impugned judgment that *Noor Mahal* palace has its monumental value and depicts real cultural aspects of the society, however awarded meagre and inconsequential increase in the amount of compensation of both the land and building. He further submits that palace is comprising of glorious building, acquired land is situated in Cantonment Area and if the property was put to auction at relevant time the same would fetch billions of rupees in as much as at present its value is 10 times higher. He argues that the acquired property is admittedly urban property surrounded by numerous housing schemes, names whereof are mentioned in the award, but its potential value has not been correctly determined by the Referee Court. He contends that in post-remand proceedings, respondents filed two applications: one for additional evidence and other for appointment of local commission to determine future potential value but these applications were arbitrarily dismissed by the Referee Court. He maintains that since remand order of this Court has attained finality, therefore appellants are precluded to agitate the matter again before this Court. He maintains that respondents received compensation under protest and challenged the award before Collector for referring the same to Referee Court for determination of correct compensation. In the end, he submits that respondents are entitled to enhanced compensation within the contemplation of Sections 23 & 24 of the Act of 1894.

6. Arguments heard. Available record perused.

7. This is second round of litigation before this Court. In previous round, against judgment and decree dated 14.12.2010,

passed by learned Referee Court, a learned Division Bench of this Court vide judgment dated 04.10.2016, passed in **RFA No.15 of 2011** and other connected cases, remanded the matters to learned Referee Court for decision afresh. Now, through judgment under challenge in these appeals, the Referee Court has enhanced -the value / price of acquired property, compensation for the acquired costs of building, compulsory charges of acquisition and compound interest, as detailed in paragraph 2 of this judgment. Appellants are not satisfied by the decision of learned Referee Court and are urging to restore the award announced by the Collector. The respondents are also not still pleased with the decision of learned Referee Court, whereby their entitlement under all heads has considerably been increased by the Referee Court, and claim further enhancement by this Court.

8. There were three main issues in the matter, which for ready reference are reiterated and re-numbered as under:-

- A. What was the market value of suit property at the time of its acquisition by appellants? OPP
- B. Whether the assessment of the valuation made by Acquiring Collector is very low as compared to the market value which is not less than one lac per Marla? OPP
- C. Whether the factum enumerated under section 3 of the Land Acquisition Act was not applied by Acquiring Collector while making assessment of the value of Noor Mahal, if so, its effects? OPP

These issues are inter-linked and inter-connected, hence accumulative discussion over them is being made. The core controversy is what was the value of the acquired property at the relevant time and whether assessment made by the Collector is accurate or determination made by the Referee Court is fair and just. If both are on lesser side, what would be the adequate valuation / compensation.

9. Respondents have produced documentary evidence relating to transactions of sale of certain lands in the same Mouza wherein the acquired property is located. Mutation (Exh.P-8) shows sale price of property in Mouza Dera Izzat as Rs.6000/- per Marla, mutation (Exh.P-28) as Rs.5750/- per Marla, mutation (Exh.P-15) as Rs.6086/- per Marla, mutation (Exh.P-25) as Rs.8335/- per Marla, mutations (Exh.P-12, Exh.P-16, Exh.P-17, Exh.P-21, Exh.P-29, Exh.P-31, Exh.P-53, Exh.P-58) as Rs.12,000/- per Marla, mutations (Exh.P-13, Exh.P-19, Exh.P-22, Exh.P-23, Exh.P-26, Exh.P-30, Exh.P-35, Exh.P-45, Exh.P-54 & Exh.P-59) as Rs.20,000/- per Marla, mutation (Exh.P-20) as Rs.22666/- per Marla, mutation (Exh.P-24) as Rs.20888/- per Marla, mutations (Exh.P-35, Exh.P-36, Exh.P-46, Exh.P-47 & Exh.P-60) as Rs.25000/- per Marla.

It is evident from the record that the above mutations have been sanctioned after the date of issuance of notification under section 4 of the Act of 1894 and before announcement of award, except mutations (Exh.P-19, 20, 28, 29 & 31), which were passed before issuance of Notification under section 4, relating to the year 1997. All these mutations are depicting the sale price of different lands in the same vicinity from Rs.6,000/- to Rs.20,000/- per Marla and learned Referee Court after appreciating the above irrefutable documentary evidence assessed the value @ Rs.15,000/- per Marla, which appears in conformity with the potential value of the property acquired.

10. The above mutations are public documents, admissibility whereof was not disputed by the other side. Some of these mutations were sanctioned before the date of issuance of Notification under section 4 of the Act 1894 and some were passed before the announcement of the award. During proceedings, a local commission was also appointed, who submitted report (Exh.A-63) and also got recorded his

statement as CW-1, whereby he had given details of the building / constructed portion, furniture available therein, inner beauty, amenities, fruity and non-fruity trees, potential use of the acquired property and its market value.

11. Appellants mainly relied upon value of the land in preceding year, specifically the rates approved by the Board of Revenue and mainly relied on Exh.R.1, however said document is not much helpful to appellants because said document pertained to the period w.e.f. 01.07.1994 to 30.06.1995 whereas as per notification under section 4 dated 13.05.1997, the duration of preceding year was from 13.05.1996 to 12.05.1997. Appellants claimed to have taken notice of only the average sale price of land in the Mouza for the period w.e.f. 01.07.1994 to 30.06.1995 without considering the relevant material in the context of the provisions of the Act of 1894, the Land Acquisition Rules, 1983 ("**the Rules of 1983**"), and the judgments of the superior Courts.

12. Learned Referee Court has rightly taken into consideration the potential value of the land by noting that building of *Noor Mahal* was beautifully decorated and furnished, having costly carpets, expensive chandeliers and big hanging frames on the walls; that its wooden work, carving floors and precious stone work also contributed towards its value on higher side in contrast to the property sold through afore-noted mutations; that *Noor Mahal* had monumental value and depicts real cultural aspects of the society. Learned Referee Court considered the peculiar nature of the property, its cultural and historical background and the potential value while fixing value of the acquired land @ Rs.15,000/- per Marla and costs of building, compulsory charges and compound interest are also based on proper appreciation of evidence brought on record.

13. We now consider the plea of enhancement of value and price of the property acquired, claimed through the cross-appeals. Determination of the quantum of monetary compensation against compulsory acquisition of the property is dependent upon multiple factors, which *inter alia* included the nature of the property, location, potential use in the context of zoning regulations, proximity to the area in vicinity, salability prospectus, market acceptability of the property in the context of demand and supply thereof, ready availability of the buyers and above all readiness to pay realizable price of the property having peculiar features. It is not disputed that *Noor Mahal* has a heritage aspect and the building manifests people's and city's collective identity. In this case the acquisition was for a purpose and that is to preserve, protect and retain the originality of the asset having monumental significance. Property in question may have frequent visitors but few willing and serious buyers. There is no gainsaying that property has a peculiar status, certainly high in cultural and aesthetic sense but limited salability options. Respondents are unable to convince this court to disbelieve the compensation determined by the Referee Court by producing evidence indicating willing buyer(s) ready to pay a price higher, than the price settled with respect to peculiar nature of the property and committing to preserve the status, architecture and originality of the building.

14. Under the law, determination of compensation for the land compulsorily acquired was the duty not only of the State/executive functionaries (particularly of the Land Acquisition Collector), but once the landowners were not compensated by them, the duty for such determination, under the Constitution and the law, was cast upon the judicial forums, including the learned Referee Court and the superior Courts. It is not a dispute merely between two private parties, rather a

matter of compulsory acquisition of property of citizens, and that is why judicial forums have also been provided under the law so that when the matter passes from the executive to the judicial forum, the judicial forum itself could see if the landowners have been rightly compensated. The rules relating to private civil disputes between private parties could not be applied to the disputes relating to the Fundamental Rights. When the concept of compensation comes into play, even burden of proof loses significance. Evidence brought on record by the parties is to be seen in its entirety, stressing less qua the obligation of the onus to proof, and applying the principle of preponderance of evidence.

15. It is appropriate to highlight statutory guidelines provided for determination of compensation and factors need to be appreciated. Section 23 of the Land Acquisition Act, 1894 is elaborating the conditions / parameters to be considered while determining compensation in land acquisition matters and section 24 whereof is indicating factors ought not to be considered while doing aforesaid exercise. For ease of reference, both these provisions are reproduced hereinbelow: -

**23. Matters to be considered in determining compensation.-**  
In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

*first, the market-value of the land at the date of the publication of the notification under section 4, sub-section (1).*

*Explanation- For the purpose of determining the market-value, the Court shall take into account transfer of land similarly situated and in similar use. only The potential-value of the land to be acquired if put to a different use shall be taken into consideration if it is proved that land similarly situated and previously in similar use has, before the date of the notification under sub-section (1) of section 4, been transferred with a view to being put to the use relied upon as affecting the potential value of the land to be acquired:*

Provided that-

- (i) if the market-value has been increased in consequence of the land being put to a use which is unlawful or contrary to public policy that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if it were put to ordinary use; and
- (ii) if the market-value of any building has been increased in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as can be accommodated in it without risk of danger to health from overcrowding.

*secondly*, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

*thirdly*, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

*fourthly*, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

*fifthly*, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

*sixthly*, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the Court shall award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition, if the acquisition has been made for a public purpose and a sum of twenty-five per centum on such market-value if the acquisition has been made for a Company."

**24. Matters to be neglected in determining compensation.-** But the Court shall not take into consideration-

*first*, the degree of urgency which has led to the acquisition;

*secondly*, any disinclination of the person interested to part with the land acquired;

*thirdly*, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

*fourthly*, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;  
*fifthly*, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;  
*sixthly*, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or  
*seventhly*, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under section 4, sub-section (1)."

16. Rule 10(1) of the Rules of 1983 binds the Commissioner of the Division to ensure certain things while issuing Notification under Section 5 of the Act of 1894 and its clause (iii) provides as under:-

"(iii) The Collector of the district has carefully and prudently calculated the estimated price of the land sought to be acquired keeping in view:-

- (a) the factors laid down in sections 23 and 24 of the Act;
- (b) the classification of the land to be acquired and its location; and
- (c) the average market price of similar kind of land similarly located, on the basis of the price prevalent during the period of twelve months preceding the date of publication of Notification under section 4."

17. Under section 23(1) of the Act, compensation is to be determined based on 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. Assessment of price is a complex combination, which requires consideration of contemporaneous conditions, at relevant time, and visionary approach to be mindful of the potentiality of the property, subject matter of acquisition. Compensation, ordinarily, 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 weightage must be attached to all these elements. After considering all the circumstances, the Court must arrive at a fair estimation of price with reference to existing and conspicuous circumstances and available evidence. The approach to be adopted 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, but certainly a circumstantial fact. Superior Courts have extended due consideration to the factor of potentiality.

18. Potential value means the value of the land based on the probability that if developed, considering its location and proximity to residential, commercial or industrial areas with amenities such as roads, water, gas, electricity, communication network and suitability, it has the potential to be developed, which will increase its value. The value of land must include the potentiality of the land because this is the value, which the landowners would benefit from if they were able to maintain their ownership over the land. So far as the determination of potential value is concerned, there is no mathematical formula, which is applied uniformly in every case. Each case needs to consider in the context of proximate facts but potential value must be factored along the market value. The objective is to ensure that the landowner not only gets the actual value of the land at the time of its acquisition but certainly benefit assessed on future prospects of the land. Consequently, factors such as entries in the revenue record and land classification(s) simplicitor cannot form the basis of

determination of compensation but prospective value thereof. Although, the Land Revenue Collector is required to classify the land being acquired with its location, under Rule 10 of the Rules, it is not the sole basis for calculating the estimated price of the land under acquisition. It is held by Hon'ble Apex Court in the case of Land Acquisition Collector and others v. Mst. Iqbal Begum and others (**PLD 2010 SC 719**) that if a landowner is deprived of his property he must be adequately compensated; give gold for gold and not copper for the gold. This is the essence of significance of potential value. The Hon'ble Apex Court has also held that compensation cannot be based on past sales of similar land in the same vicinity because potentiality cannot be determined without examining future prospects. Hence, compensation is about the value of the land, being its market value plus its potential value, ensuring that landowner is duly compensated. This is fundamental to the process of award of compensation. Reference is made to Land Acquisition Collector and others v. Mst. Iqbal Begum and others (**PLD 2010 Supreme Court 719**), Province of Punjab through Land Acquisition Collector and another v. Begum Aziza (**2014 SCMR 75**), Land Acquisition Collector, G.S.C., N.T.D.C., (WAPDA), Lahore and another v. Mst. Surraya Mehmood Jan (**2015 SCMR 28**), Air Weapon Complex through DG v. Muhammad Aslam and others (**2018 SCMR 779**), Sarhad Development Authority N.W.F.P. (NOW KPK) through COO/CEO (Officio) and others v. Nawab Ali Khan and others (**2020 SCMR 265**), Federal Government of Pakistan through Ministry of Defence Rawalpindi and others v. Mst. Zakia Begum and others (**PLD 2023 Supreme Court 277**) and Malik Tariq Mahmood and others v. Province of Punjab and others (**2023 SCMR 102**).

19. Learned Referee Court has rightly appreciated the material / evidence brought on record, facts of the case, applicable law / rules and dictum laid down by Hon'ble superior Courts while passing the impugned decision. Learned counsel for the parties could not make out a case for interference by us in the impugned decision in exercise of appellate jurisdiction.

20. In view of the above, instant as well as connected appeals, being devoid of merits, are dismissed. No order as to costs.

**(Asim Hafeez)      (Muhammad Sajid Mehmood Sethi)**  
**Judge                          Judge**

**APPROVED FOR REPORTING**

## Judge                          Judge

\*Sultan\*