Stereo.HCJDA 38.

JUDGMENT SHEET.

LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI.
JUDICIAL DEPARTMENT

R.F.A No.83 of 2014

NATIONAL COMMAND AUTHORITY, ETC.

Versus.

ZAHOOR AZAM, ETC.

JUDGMENT.

Date of hearing:	***17th, 18th and 22nd of May, 2023.***
Appellants in R.F.A No.83 and 84 of 2014, respondent No.3 in R.F.A No.53 of 2014 and respondent No.2 in R.F.A No.155 of 2016 by:	*M/s Usman Jillani & Waseem Doga, Advocates.*
Appellants in R.F.A No.53 of 2014 by:	*Mr. Tanvir Iqbal Khan, Advocate.*
Appellants in R.F.A No.155 by:	*Mr. Muhammad Asif Ch., Advocate.*
Respondents No.1 to 5 and 8 in R.F.A No.83 of 2014 by:	*Ch. Imran Hassan Ali, Advocate.*
Respondent No.6 in R.F.A No.83, Respondent No.3 in R.F.A No.84 and respondent No.2 in R.F.A No.53 of 2014 by:	*Mr. Muhammad Siddique Awan, Additional Attorney General for Pakistan.*
Respondent No.7 in R.F.As No.83, respondent No.4 in R.F.A No.84 and respondent No.1 in R.F.As No.53 and 155 of 2014 by:	*Malik Amjad Ali, Additional Advocate General for Punjab.*
Respondents No.1 and 2 in R.F.A No.84 of 2014 by:	*Mr. Tanvir Iqbal Khan, Advocate.*

Mirza Viqas Rauf, J. *By way of this single judgment, we intend to decide the title appeal as well as R.F.As No.53, 84 of 2014 and R.F.A No.155 of 2016 as all these appeals are arising from award No.395/DDO(R) Dated 16th July, 2009 whereby land measuring 177-Kanal 2-Marla situated in village Lab Thathoo, Tehsil Taxila, District*

Rawalpindi was acquired for the expansion and protection against any security hazard to Air Weapons Complex (hereinafter referred to as "AWC"), Village Lab Thathoo Taxila.

2. *Facts forming background are that on the request of the Director Works & Services, Directorate of Works & Services Air Weapons Complex Wah Cantt, Land Acquisition Collector, Taxila (hereinafter referred to as "L.A.C") initiated the proceedings for acquisition of piece of land for expansion and protection against any security hazard to "AWC", a project of vital national importance by issuance of notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "Act"), which was approved by the District Collector, Rawalpindi and published in the Punjab Gazette on 4th December, 2004, declaring that the land measuring 180-Kanal 2-Marla specified in the notification is required for the purpose of defense project of AWC-PAF, Wah Cantt. This followed a notification under section 17(4) & 6 of the "Act", whereby provisions of sections 5 and 5-A of the "Act" were waived and Collector was authorized under section 7 of the "Act" to take order for acquisition of the said land. The acquiring department, however, excluded 3-Kanal of land and finally 177-Kanal 2-Marla land was notified as per notification under sections 17(4) and 6 of the "Act" from Village Lub Thathoo, Tehsil Taxila, District Rawalpindi. After issuance of notices under sections 9 & 10 of the "Act" and observing other codal formalities, award in terms of section 11 of the "Act" was announced wherein compensation for the acquired land was determined in the following manner: -*

Village	***Khasra No.***	***Area K-M***	***Rate per Kanal***	***Total Cost***
Lab Thathoo	*1842 to 1850*	*136-05*	*Rs.70,000/-*	*Rs.95,37,500/-*
	2144/1-2 and 2145	*19-11 Commercial*	*Rs.6,00,000/-*	*Rs.1,17,30,000/-*
		21-06 Residential	*Rs.3,50,000/-*	*Rs.74,55,000/-*
	Total	***177-02***	***Total***	*Rs.2,87,22,500/-*
15% compulsory land acquisition charges				*Rs.43,08,375/-*
			Grand Total	***Rs.3,30,30,875/-***

The land owners feeling dissatisfied from the compensation, moved their petitions under section 18 of the "Act" before the "L.A.C", who routed the same to the learned Senior Civil Judge for decision, which were since decided through separate orders, hence these appeals.

Brief Background of R.F.A.No.83 of 2014.

3. *This appeal is on behalf of National Command Authority (NCA) and Air Weapons Complex (AWC) (hereinafter referred to as "beneficiary department") under section 54 of the "Act" challenging the vires of order dated 6th December, 2013 passed on a reference petition filed by respondents No.1 to 5 (hereinafter referred as "land owners"), whereby the learned Senior Civil Judge accepted the reference petition and held the "land owners" entitled to receive the compensation @ Rs.3,00,000/- per Marla alongwith 15% compulsory acquisition charges and 8% interest compound interest under section 28 of the "Act" from the date of award till the date of payment of compensation.*

Brief Background of RFA No.53 of 2014.

4. *This appeal is on behalf of "land owners" arising out of order dated 6th December, 2013 whereby on their reference petition, the compensation was enhanced from Rs.70,000/- to Rs.10,00,000/- per Kanal alongwith 15% compulsory acquisition charges, 8% interest compound interest under section 28 of the "Act" on the enhanced compensation from the date of award till the date of payment of compensation but they still feel unsatisfied.*

Brief background of R.F.A No.84 of 2014

5. *This appeal is again on behalf of "beneficiary department" against the same order, which is under challenge in R.F.A No.53 of 2014.*

Brief background of R.F.A No.155 of 2016.

6. *R.F.A No.155 of 2016 is also on behalf of one of the "land owner", who has challenged the order dated 29th April, 2016, whereby on his reference petition, the learned Senior Civil Judge, Rawalpindi held him entitled to receive compensation @ Rs.6,00,000/- per Kanal alongwith 15% compulsory acquisition charges, 8% compound interest on the excess amount under section 28 of the "Act".*

7. *Learned counsel representing the "beneficiary department" submitted that compensation was rightly determined by the Collector in the award. He added that the Referee Court, without adverting to the material pieces of evidence, enhanced the compensation in a flimsy manner. Learned counsel contended that while enhancing the compensation, learned Senior Civil Judge has mainly relied upon an application form for membership of "AWC" Employees Housing Society (Exh.A8), which was even not admissible in evidence. Learned counsel submitted that in view of statement of Muhammad Yasin Abbasi/AW-1, the former DDO (R) and his report Exh.A1, compensation cannot be awarded at the rate determined by the Referee Court. It is vehemently contended by the learned counsel for the "beneficiary department" that the Referee Court proceeded in a mechanical manner without application of judicious mind to the facts of the case and as such impugned orders resulting into enhancement of compensation are not tenable. In support of his contentions, learned counsel placed reliance on FEDERATION OF PAKISTAN through Secretary Ministry of Defence and another v. JAFFAR KHAN and others* ***(PLD 2010 Supreme Court 604)****, ASKARI CEMENT LIMITED (FORMERLY ASSOCIATED CEMENT LIMITED) through Chief Executive v. LAND ACQUISITION COLLECTOR (INDUSTRIES) PUNJAB and others* ***(2013 SCMR 1644)*** *and MANZOOR HUSSAIN (deceased) through L.Rs. v. MISRI KHAN* ***(PLD 2020 Supreme Court 749)****.*

8. *While responding to the contentions of learned counsel for the "beneficiary department", Mr. Imran Hassan Ali, Advocate representing the "land owners" in R.F.A No.83 of 2014, submitted that the acquired land was commercial in nature and to this effect, overwhelming evidence is available on the record. He added that Muhammad Yasin Abbasi, former DDO(R) was examined for the production of documentary evidence in the shape of his report Exh.A1. Learned counsel submitted that in terms of Article 134 of the Qanun-e-Shahadat Order, 1984, said witness could not be cross-examined. Learned counsel emphasized that compensation was not enhanced by the Referee Court merely on the basis of Exh.A8 but whole evidence was taken into consideration for the said purpose. It is submitted that documents Exh.A2 to Exh.A8 were though tendered in the statement of counsel but no objection was taken at the relevant time and as such "beneficiary department" is precluded to take any such objection at the belated stage. Reliance is placed on MUHAMMAD IQBAL v. MEHBOOB ALAM* ***(2015 SCMR 21)****, GULZAR HUSSAIN v. ABDUR REHMAN and another* ***(1985 SCMR 301)****, PERVAIZ AKHTAR and others v. LAND ACQUISITION COLLECTOR and others* ***(PLD 2022 Lahore 730)****, FEDERAL GOVERNMENT OF PAKISTAN through Ministry of Defence Rawalpindi and others v. Mst. ZAKIA BEGUM and others* ***(PLD 2023 Supreme Court 277)*** *and Mst. AKHTAR SULTANA v. Major Retd. MUZAFFAR KHAN MALIK through his legal heirs and others* ***(PLD 2021 Supreme Court 715)****.*

9. *Mr. Tanvir Iqbal Khan, Advocate representing the "land owners" in RFA No.53 of 2014 submitted that the land owned by his clients was abutting the main Hazara Road and is of commercial nature. He added that though land in question was of one kind and nature but it was divided into two categories without any rhyme and reason. Learned counsel submitted that the "land owners" were deprived of from due compensation. It is vehemently argued by the learned counsel that while*

determining the compensation, the Collector did not take into consideration the potential value of the acquired land. In support of his contentions, learned counsel placed reliance on AIR WEAPON COMPLEX through DG v. MUHAMMAD ASLAM and others ***(2018 SCMR 779)***.

10. *Mr. Muhammad Asif Chaudhary, Advocate representing the "land owners" in R.F.A No.155 of 2016, while adopting the arguments of learned counsel for the other "land owners" submitted that though land of his client was situated in the same Khasra numbers where land of "land owners" namely M/s Amjad Kamal Malik falls but he was discriminated in the matter of compensation. Learned counsel contended that his client is also entitled for the same treatment as he cannot be discriminated in terms of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973.*

11. *Heard. Record perused.*

12. *As already observed that on the request of Director Works and Services, Directorate Works and Services, Air Weapons Complex Wah Cantt, land measuring 177-Kanal 2-Marla situated in village Lab Thathoo was acquired for the expansion and protection against any security hazard to "AWC", a project of vital national importance through awarded dated 16th July, 2009. For the purpose of acquisition, notification under section 4 of the "Act" was published in the gazette on 4th December, 2004, which followed notification under section 17 (4) & 6 of the "Act". The acquired land comprising of 177-Kanal 2-Marla formed part of Khasra Nos.1842 to 1850, 2144/1-2 and 2145. It evinces from the award that from Khasra Nos.1842 to 1850, an area of 136-Kanal 5-Marla was acquired for which compensation was awarded @ Rs.70,000/- per Kanal. The portion of acquired land situated in Khasra Nos.2144/1-2 and Khasra No.2145 was, however, distributed in commercial and residential character and while treating 19-Kanal 11-*

Marla as commercial, compensation was fixed as Rs.6,00,000/- per Kanal whereas for rest of 21-K 6-M, which was treated as residential, Rs.3,50,000/- per Kanal was awarded. There are thus three categories of "land owners" whose land was acquired through award. The "land owners" in RFA No.83 of 2014 were divested from their land measuring 25-Kanal 13-Marla bearing Khasra No.2144/1-2 and 2145 out of which 19-Kanal 11-Marla was treated as commercial whereas 6-Kanal 2-Marla was treated as residential. Their claim in the reference, however, was that whole land was commercial in nature and as such they claimed compensation @ Rs.10,00,000/- per Marla. In support whereof, they produced Muhammad Yasin Abbasi, former DDO(R) as AW-1, in whose statement report dated 29th October, 1997 was tendered as Exh.A1. In addition, one of the "land owners" Zahoor Azam appeared as AW-2, who in his statement reiterated the contents of his reference petition. Syed Ghulam Mustafa Shah was produced as AW-3 to further strengthen the claim, however, copies of notification and awards alongwith copy of record of rights, 'Aks Shajra Kishtwar' and application form for membership was produced in the statement of counsel. It would not be out of place to mention here that all the "land owners" have produced almost similar evidence.

13. *In order to diminish the value of the evidence produced by the "land owners", the "beneficiary department" produced Khalid Hussain, Assistant Air Weapon Complex (AWC) as RW-1, who also tendered certain documents in evidence to rebut the claim of the "land owners".*

14. *After having apprised the evidence, learned Senior Civil Judge enhanced the compensation @ Rs.3,00,000/- per Marla i.e. Rs.60,00,000/- per Kanal. In order to evaluate the findings of the trial Court, we have also reappraised the evidence produced by both the sides. As the acquired land was bifurcated in two categories i.e. commercial and residential but it is claimed by the "land owners" that*

their land was of commercial in nature, so it would be apt to first determine this fact.

15. *In their reference petition, "land owners" at the very outset, asserted that whole land bearing Khasra Nos.2144 and 2145 is commercial in nature and abuts main G.T Road leading towards Abotabad surrounded by many other commercial properties, including petrol pumps/CNG Stations, etc. To this effect, in addition to oral account, the "land owners" also produced 'Aks Shajra Kishtwar' as Exh.A7, which is evident of the fact that their land is located at the periphery of the main Hazara Road. While responding these assertions, the "beneficiary department" did not specifically deny the facts asserted in the petition. In para-1 in the latter portion of their reply, an evasive denial to this effect was though made, which is nothing but an admission of fact on their part as per contemplation of Order VIII Rule 5 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as "CPC"). The statement of Zahoor Azam, AW-2 is also unequivocal to this effect. Khalid Hussain, RW-1, during cross-examination, also confirmed the status of the acquired land as commercial in the following words: -*

درست ہے کہ متذکرہ بالا خسرہ جات مسمیٰ جی ٹی روڈ جو ایبٹ آباد کو جاتی ہے اس پر واقع ہے۔
AWC کا پٹرول پمپ انہی خسرہ نمبرات میں واقع ہے۔

The above extract of the evidence of the parties leads us to an irresistible conclusion that acquired land was of commercial nature at the time of its acquisition.

16. *Next comes the matter relating to the compensation of acquired land. Since we have already noted the rate at which the Collector fixed the compensation and the land owners claimed it from the Referee Court and the amount for which they were held entitled on their reference, so we would not go into desultory details to that effect, so as to avoid the repetition.*

17. *Section 23 of the "Act" provides the mechanism for the determination of compensation for its award to the landowners in lieu of acquisition of their land. For ready reference and convenience, same is reproduced below: -*

"**23. Matters to be considered in determining compensation.–**

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration–

Firstly, the market value of the land at the date of the publication of the notification under section 4, sub-section (1);

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.

(3) For the purpose of clause first of sub-clause (1) of this section the market value of the land shall be determined on the basis of the average net income of that land for the five years preceding 1st September, 1961:

Provided that if in any of these years that land or any portion of it has not been cultivated, the net income of such land or portion in that year shall be taken to be three times the land revenue assessed thereon, if no land revenue has been so assessed, three times the lowest rate of land revenue assessed on neighboring land;

> Provided further that in respect of land which is situated in town or village abadi or land which is attached to a house, manufactory, or other building and is reasonably required for the enjoyment and use of the house, manufactory, or building, the market-values shall be the market-value according to the use to which the land was being put on the 1st September, 1961.**"**

From the bare reading of the above provision, it is apparent that the intent of legislature was to give it wider scope so the factors for the purpose of determination of compensation cannot be restricted to some specific conditions. While interpreting the true import of section 23 of the "Act", the Superior Courts have outlined the salient features to be taken into consideration for assessing the compensation of acquired land. Most commonly derived of which are as under: -

(a) its market value at the prevalent time and its potential;

(b) one year average of sale taken place before publication of notification under section 4 of the Act of the similar land;

(c) its likelihood of development and improvement;

(d) a willing purchaser would pay to a willing buyer in an open market arms length transaction entered into without any compulsion;

(e) loss or injury occurred by severing of acquired land from other property of the land owner;

(f) loss or injury by change of residence or place of business and loss of profit;

(g) delay in the consummation of acquisition proceedings and;

(h) peculiar facts and circumstances of each case.

18. *Section 23 of the "Act", thus, does not hinge upon a single factor, rather it provides for various matters to be taken into consideration while determining compensation. Initially, there was a trend that while determining the compensation, market value of the land at the date of publication of notification under section 4 of the "Act" was mainly taken into consideration but with the passage of time, law to this effect has gone under radical change and now the dominant factor is the potential value of the land. Market value is only one of such factors to be considered for the purpose of award of compensation to the*

land owners. Location, neighborhood, potentiality or other benefits, which may ensue from the land in future could not be ignored. The most dominant and guiding factor would be that the compensation should be determined at the price, which a willing buyer would pay to a seller as per his satisfaction. But at the same time, one cannot lose sight of the fact that compensation cannot be awarded to the "land owners" as a bounty of state.

19. *It would not be out of context to mention here that initially the term "potential value" was not so recognized to section 23 of the "Act" but gradually it attained paramount importance and became the most dominant factor for the determination of compensation. Reference to this effect can be made to AIR WEAPON COMPLEX through DG versus MUHAMMAD ASLAM and others* ***(2018 SCMR 779)****. In the recent past, this Court has also reiterated the above principles in the case of PERVAIZ AKHTAR and others v. LAND ACQUISITION COLLECTOR and others* ***(PLD 2022 Lahore 730)*** *but the most recent case is FEDERAL GOVERNMENT OF PAKISTAN through Ministry of Defence Rawalpindi and others v. Mst. ZAKIA BEGUM and others* ***(PLD 2023 Supreme Court 277)****. The relevant extract from the same is reproduced below: -*

> "11. The law of acquisition is confiscatory in nature and easily deprives an individual of their property and all rights attached to it. The Constitution of the Islamic Republic of Pakistan, 1973 (Constitution) gives every citizen the right to acquire, hold and dispose of property in every part of Pakistan under Article 23. Property has been interpreted to mean and include a right of proprietorship and includes every possible right or interest abstract or concrete. It includes the right to own, possess and enjoy the property (Pakcom Limited and others v. Federation of Pakistan and others PLD 2011 SC 44). The right to own property being a fundamental right is inclusive of the right to possession, right of control and the right to derive income from the property. Accordingly, the right to own property under Article 23 of the Constitution means the right to own economically productive property associated with agriculture, commerce, industry and business. Hence, it is a source of livelihood and provides economic security to a person. This goes to the underlying right to dignity of an individual and their home, as prescribed in Article 14 of the Constitution. Article 24 of the Constitution

> protects the right to own property such that no person can be deprived of his property save in accordance with law under Article 24. The exception to this fundamental right as per Article 24 is compulsory acquisition for public purpose, which means that the State can acquire private property for public purpose under the authority of law, which provides for compensation and either fixes the compensation or provides for a mechanism to fix compensation. The Constitution, therefore, mandates that if there is any acquisition by the State, it will be under a Statute, which provides for due process and compensation. So the Constitution has ensured that if acquisition is necessary it comes at a cost, which is compensation. The right to compensation under the authority of a law has a constitutional underpinning that is the protection given to the right to own property. In the context of acquisition it means that a person who owns property has to be compensated on account of being deprived of their property. When a person is deprived of their right to own property, even if in accordance with law, they are deprived of their right to control, possess and earn from that property. And this deprivation is what must be compensated."

20. *Now adverting to the matter in issue, so as to examine the question relating to the proper compensation to the "land owners", it is observed that "land owners" in R.F.A No.83 of 2014 were owning land measuring 25-Kanal 13-Marla forming part of Khasra No.2144/01 and 2144/02 out of which 19-Kanal 11-Marla was treated as commercial and rest as residential. Since we have already determined the status of acquired land as commercial in the light of our discussion in preceding paras, so we shall now proceed on the same analogy to this extent. At the cost of repetition, we observe that compensation was claimed by the "land owners" at the rate of Rs.10,00,000/- per Marla in their reference petition, which tends to Rs.20,000,000/- per Kanal. To this effect, statement of Muhammad Yasin Abbasi (AW-1) in the first instance is of significant importance. It is though stance of the "land owners" that he was only examined for the purpose of tendering report Exh.A1 but admittedly he was not summoned by the orders of the Court as is required under Order XVI Rule 6 of "CPC". AW-1 was even not the court witness, so no other legal inference can be drawn except that he was produced by the "land owners" for their own cause, as such he shall be treated as their witness, being examined to support their claim.*

21. *So far contention of learned counsel for the "land owners" that in terms of Article 134 of the Qanun-e-Shahadat Order, 1984, AW-1 could not be subject to cross-examination, suffice to observe that Article 134 only immunes a witness from the test of cross-examination if he was summoned to produce a document but this is not the case. As already observed that AW-1 was never summoned as was required under Order XVI Rule 6 "CPC", rather he was produced by the "land owners" as their own witness. Article 134 of the Qanun-e-Shahadat Order, 1984 would thus not come into play and as such said witness was rightly cross-examined. Needless to mention that AW-1 had though served in the revenue department but at the relevant time, he was not in service and apparently he appeared in his personal capacity to support the cause of the "land owners". As per his statement, at the time of his inspection, the valuation of the commercial property was Rs.3,00,000/- per Kanal. AW-1 also tendered his report as Exh.A1 wherein it is mentioned that "land owners" demanded the compensation at the rate of Rs.40,000,00/- per Kanal. In this regard, we cannot ignore the statement of AW-2, who during cross-examination deposed as under: -*

اراضی کی موجودہ مارکیٹ ویلیو پندرہ سے پچیس لاکھ روپے فی کنال کمرشل ہے۔

22. *It appears that the Referee Court, while ignoring the above noted material pieces of evidence, rested its findings mainly on Exh.A8, which was made part of record through the statement of counsel for the "land owners" depriving the "beneficiary department" to raise any objection qua its admissibility. Before us, to this effect both the sides have referred various judgments. First of the series is* <u>*GULZAR HUSSAIN v. ABDUR REHMAN and another*</u> ***(1985 SCMR 301)****, which is rendered by a Bench comprising of five Hon'ble Judges of the Supreme Court wherein it is held as under: -*

> "10. Section 67 of the Evidence Act lays down, the mode of proof of the execution of a document. As a general proposition it is correct to say that every document given in evidence must be

> proved in the mode prescribed by this section and if it is not so proved it will be inadmissible in evidence. But this is subject to the exception in cases where proof of a document is dispensed with under some special provision. However, the mode of proof of a document is a question of procedure and is accordingly capable of being waived. Thus, where objection as to the manner of proof of a document is not taken at the time the document is sought to be proved in the lower Court and the document is exhibited and referred to, no such objection can be allowed to be raised in appeal or revision. This Court had occasion to pronounce on this legal aspect in several decisions."

The above principles were even reiterated in the case of MUHAMMAD IQBAL v. MEHBOOB ALAM ***(2015 SCMR 21)***.

23. *In the case of FEDERATION OF PAKISTAN through Secretary Ministry of Defence and another v. JAFFAR KHAN and others* ***(PLD 2010 Supreme Court 604)****, it is held by the Supreme Court that the document, which has not been brought on record through witnesses and has not been exhibited, cannot be taken into consideration by the Court but the facts in the said case were altogether different. In the case of MANZOOR HUSSAIN (deceased) through L.Rs. v. MISRI KHAN* ***(PLD 2020 Supreme Court 749)****, the proposition is, however, similar and akin to the present one wherein certain documents were tendered in evidence by the counsel and in that backdrop, the Supreme Court of Pakistan observed as under: -*

> "4. Before parting with this case we would like to comment on a related matter. Copies of the acknowledgement receipt (exhibit P4), aks shajarah kishtwar (exhibit P2), registered post receipt (exhibit P3), mutation (exhibit P5) and jamabandi for the year 2000-2001 (exhibit P6) were produced and exhibited by the pre-emptor's counsel, but without him testifying. We have noted that copies of documents, having no concern with counsel, are often tendered in evidence through a simple statement of counsel but without administering an oath to him and without him testifying, especially in the province of Punjab. Ordinarily, documents are produced through a witness who testifies on oath and who may be cross-examined by the other side. However, there are exceptions with regard to facts which need not be proved; these are those which the Court will take judicial notice of under Article 111 of the Qanun-e-Shahadat Order, 1984 and are mentioned in Article 112, and facts which are admitted (Article 113, Qanun-e-Shahadat Order, 1984)."

To the above effect, most recent judgment is in the case of Mst. AKHTAR SULTANA v. Major Retd. MUZAFFAR KHAN MALIK through his legal heirs and others ***(PLD 2021 Supreme Court 715)*** *wherein the Supreme Court outlined the true import of the relevant provisions of the Qanun-e-Shahadat Order, 1984 dealing with the relevancy and admissibility of the documentary evidence in the following manner: -*

(i) Relevant and admissible evidence

10. The Qanun-e-Shahadat, 1984 ("Qanun-e-Shahadat") governs the law of evidence in our country. The expression "relevancy" and "admissibility" have their own distinct legal implications under the Qanun-e-Shahadat as, more often than not, facts which are relevant may not be admissible. On the one hand, a fact is "relevant" if it is logically probative or dis-probative of the fact-in-issue, which requires proof. On the other hand, a fact is "admissible" if it is relevant and not excluded by any exclusionary provision, express or implied. What is to be understood is that unlike "relevance", which is factual and determined solely by reference to the logical relationship between the fact claimed to be relevant and the fact-in-issue, "admissibility" is a matter of law. Thus, a "relevant" fact would be "admissible" unless it is excluded from being admitted, or is required to be proved in a particular mode(s) before it can be admitted as evidence, by the provisions of the Qanun-e-Shahadat. As far as the latter is concerned, and that too relating to documents, admissibility is of two types: (i) admissible subject to proof, and (ii) admissible per se, that is, when the document is admitted in evidence without requiring proof.

(ii) Mode of proof

11. Mode of proof is the procedure by which the "relevant" and "admissible" facts have to be proved, the manner whereof has been prescribed in Articles 70-89 of the Qanun-e-Shahadat. In other words, a "relevant" and "admissible" fact is admitted as a piece of evidence, only when the same has been proved by the party asserting the same. In this regard, the foundational principle governing proof of contents of documents is that the same are to be proved by producing "primary evidence" or "secondary evidence". The latter is only permissible in certain prescribed circumstances, which have been expressly provided in the Qanun-e-Shahadat.

12. What is important to note is that, as a general principle, an objection as to inadmissibility of a document can be raised at any stage of the case, even if it had not been taken when the document was tendered in evidence. However, the objection as to the mode of proving contents of a document or its execution is to be taken, when a particular mode is adopted by the party at the evidence-recording stage during trial. The latter kind of

objection cannot be allowed to be raised, for the first time, at any subsequent stage. This principle is based on the rule of fair play. As if the objection regarding the mode of proof adopted has been taken at the appropriate stage, it would have enabled the party tendering the evidence to cure the defect and resort to other mode of proof. The omission to object at the appropriate stage becomes fatal because, by his failure, the party entitled to object allows the party tendering the evidence to act on assumption that he has no objection about the mode of proof adopted.

13. It is also important to note that the objection as to "mode of proof" should not be confused with the objection of "absence of proof". Absence of proof goes to the very root of admissibility of the document as a piece of evidence; therefore, this objection can be raised at any stage, as the first proviso to Article 161 of the Qanun-e-Shahadat commands that "the judgment must be based upon facts declared by this Order to be relevant, and duly proved". In other words, when the Qanun-e-Shahadat provides several modes of proving a relevant fact and a party adopts a particular mode that is permissible only in certain circumstances, the failure to take objection when that mode is adopted, estops the opposing party to raise, at a subsequent stage, the objection to the mode of proof adopted. However, when the Qanun-e-Shahadat provides only one mode of proving a relevant fact and that mode is not adopted, or when it provides several modes of proving a relevant fact and none of them is adopted, such a case falls within the purview of "absence of proof", and not "mode of proof"; therefore, the objection thereto can be taken at any stage, even if it has not earlier been taken.

(iii) Evidentiary value

14. Once a fact crosses the threshold of "relevancy", "admissibility" and "proof", as mandated under the provisions of the Qanun-e-Shahadat, would it be said to be admitted, for its evidentiary value to be adjudged by the trial court. The evidentiary value or in other words, weight of evidence, is actually a qualitative assessment made by the trial judge of the probative value of the proved fact. Unlike "admissibility", the evidentiary value of a piece of evidence cannot be determined by fixed rules, since it depends mainly on common sense, logic and experience and is determined by the trial judge, keeping in view the peculiarities of each case."

24. *Coming to the admissibility of the document Exh.A8, after having an overview of the principles mentioned hereinabove, it is observed that in the light of principles laid down in MANZOOR HUSSAIN (deceased) through L.Rs. v. MISRI KHAN supra, since the document does not come within the exceptions ordained in Articles 111, 112 and 113 of the "Order, 1984", so it cannot be termed as admissible.*

Even otherwise, in the light of its nature being a membership form of a developed housing society, heavy reliance on Exh.A8, in no manner, would be safe for the administration of justice.

25. *It is also one of the contentions of learned counsel for the "land owners" that appeal has become barred by time on account of the fact that respondent No.8 was impleaded after the prescribed period of limitation, we may observe that it is trite law that if more than one appeals are arisen out of a common judgment and if one or more of those appeals are even barred by time, same could not be dismissed on account of limitation. Guidance in this respect can be sought from MEHREEN ZAIBUN NISA v. LAND COMMISSIONER, MULTAN AND OTHERS* ***(PLD 1975 Supreme Court 397)*** *and PRINCIPAL PUBLIC SCHOOL SANGOTA, GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and others v. SARBILAND and others* ***(2022 SCMR 189)****.*

26. *It is an oft repeated principle that a fair compensation for the acquired land is that which a willing vendor would accept on account of sale of his property. It is always bounden duty of the Land Acquisition Collector to take into consideration all the relevant factors, while determining the amount of compensation instead of relying upon the compensation assessed by the price assessment committee or the Board of Revenue. Guidance in this respect can be sought from AIR WEAPON COMPLEX through DG versus MUHAMMAD ASLAM and others* ***(2018 SCMR 779)*** *and PROVINCE OF PUNJAB through Land Acquisition Collector and another versus BEGUM AZIZA* ***(2014 SCMR 75)****.*

27. *In the case of LAND ACQUISITION COLLECTOR, G.S.C., N.T.D.C., (WAPDA), LAHORE and another versus Mst. SURRAYA BEHMOOD JAN* ***(2015 SCMR 28)*** *the Supreme Court of Pakistan, while outlining the scope of Section 23 of the Act ibid held as under :-*

> **"**9. The principles that can be gleaned from the aforesaid

> judicial precedents are that the term "market-value" as employed in section 23 of the Act of 1894 implies the price that a willing purchaser would pay to a willing buyer in an open market arms length transaction entered into without any compulsion. Such determination must be objective rather than subjective. 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.
>
> A bare reading of the provision in question i.e. section 23 of the Act of 1894 reveals that the landowner is entitled to compensation and not just market-value, hence, loss or injury occasioned by its severing from other property of the landowner, by change of residence or place of business and loss of profits are also relevant. The delay in the consummation of the acquisition proceedings cannot be lost sight of. While conducting the aforesaid exercise, oral evidence, if found, credible and reliable can also be taken into account.**"**

28. *After having threadbare discussion, we are of the considered view that the "land owners" in the circumstances were entitled for the compensation at the rate of Rs.20,00,000/- (twenty lacs) per Kanal but the referee court held them entitled to the compensation at the rate of Rs.60,00,000/- per kanal without properly evaluating the evidence.*

29. *So far "land owners" in R.F.A No.53 of 2014 are concerned, they were deprived of land measuring 136 Kanal 5 Marla falling in Khasra Nos.1842 to 1850. Their land was though in the compact form as is evident from 'Aks Shajra Kishtwar' Exh.A6 but it was also categorized in different kinds as of nature and compensation as well without assigning any reasoning. Land in question is situated in the proximity of other acquired land and cannot be bifurcated. Law does not allow any discrimination amongst the equal. "Land owners" therein are thus also entitled for similar treatment in the matter of compensation.*

30. *Last is R.F.A No.155/2016 wherein the "land owner" was holding title of land measuring 4-Kanal bearing Khasra Nos.2144/2 &*

2145 like the "land owners" in R.F.A No.83 of 2014 but strangely enough he has been awarded Rs.6,00,000/- per kanal as compensation by Referee Court much less to the said "land owners". Apparently, there are though no distinctive features in the case of "land owners" in this appeal but he has been treated in a discriminatory manner, which clearly offends the mandate of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973.

31. *The nutshell of above discussion is that this appeal is partly* ***allowed*** *in terms of para-28 above while maintaining the ancillary relief awarded by the Referee Court to the "land owners".*

(Jawad Hassan) ***(Mirza Viqas Rauf)***
JUDGE *JUDGE*

Dictated:
08.06.2023
Signed
14.06.2023.

Announced in open Court on 14.06.2023.

JUDGE *JUDGE*

Approved for reporting.

JUDGE *JUDGE*

Zeeshan