

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

RFA No.54482 of 2023

National Highway Authority through its Chairman

Versus

Mubashar Hussain Awan & others

J U D G M E N T

Date of hearing: 28.10.2024.
Appellant by: M/s Muhammad Saim Chaudhry, Dewan Zakir Hussain and Saima Safdar Chaudhry, Advocates.
Mr. Muhammad Zain Qazi, Assistant Attorney General.
Respondents by: Sh. Usman Karim-ud-Din, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.-

Through instant appeal, appellant / National Highway Authority (“NHA”) has challenged the *vires* of order / decree dated 04.04.2023, passed by learned Senior Civil Judge, Gujranwala, whereby Reference Application under Section 18 of the Land Acquisition Act, 1894 (“**the Act of 1894**”), filed by respondents No.1 & 2, was allowed in the following terms:-

“41. In view of my findings on above issues, this reference U/S 18 of the Land Acquisition Act, 1894 is **accepted** and petitioners are held entitled to get market value as claimed by them coupled with amount of damages sustained due to acquisition proceedings, compensation for future potential of property, additional compensation for reverence, injurious affection, disturbance, loss of profits, change of place of business, severing of one chunk of property from other property and delay in conclusion of acquisition proceedings which is calculated as under:-

- | | |
|----------------------|----------------|
| ➤ Rs.26-lac per acre | (link road) |
| ➤ Rs.24-lac per acre | (kacha road) |
| ➤ Rs.22-lac per acre | (off road) |
| ➤ Rs.35-lac per acre | (severed land) |

thus petitioners are held entitled to get enhanced compensation as above alongwith 15% compulsory acquisition charges and 8% compound interest on the excess compensation awarded by this order from the date of possession i.e. 30.09.2016 till the execution of this order or payment of remaining compensation by National Highway Authority / respondent No.2 / Acquiring Agency.

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2. Brief facts of the case are that respondents No.1 & 2 filed Reference Application challenging the award No.06/2017 dated 16.06.2017, announced by the Land Acquisition Collector, Kamoke for acquisition of land in question, situated in Mauza Kot Kirpa Ram, for the purpose of construction of Lahore-Sialkot Motorway Project in Tehsil Kamoke, District Gujranwala, whereby the respondents No.1 & 2 were awarded compensation amount @ Rs.16,00,000/- per acre for "link road" land, Rs.15,25,000/- per acre for "off road" land and Rs.15,20,000/- per acre for "kacha road" land. The appellant-NHA filed written reply. Out of divergent pleadings of the parties, the Referee Court framed following issues: -

ISSUES:

1. Whether petitioners property was not evaluated and assessed by respondents according to market value and potential value and petitioners are being compensated for lesser value and is entitled to enhance compensation? OPA.
2. Whether petitioners are entitled to receive compensation of their acquired land and damages they sustained Rs.22-lac/24-lac/26-lac per acre along with interest and 30-lac to 35-lac for severed land per acre along with interest instead of Rs.15,20,000/Rs.15,25,000/- and Rs.16,00,000/- per acre? OPA.
3. Whether possession of the property was taken immediately after issuance of notification u/s 17(4) Land Acquisition Act, whereas award was announced on 16.06.2017? OPA.
4. Whether Authority authorized to assess compensation has not exercised its jurisdiction as per law? OPA.
5. Whether petitioners have not come to Court with clean hands? OPR.

6. Whether instant reference of petitioners is liable to be dismissed under Order VII Rule 11 CPC? OPR.
7. Whether petitioners have no cause of action and locus standi to file this reference? OPR.
8. Relief

After recording evidence and hearing arguments from all sides, the Referee Court, vide order / decree dated 04.04.2023, allowed the Reference Application in the above manner. Hence, instant appeal.

3. Learned Legal Advisor for appellant-NHA submits that the compensation was enhanced without determining the average market price of the land while ignoring Rule 10(1)(iii)(c) of the Punjab Land Acquisition Rules, 1983. He adds that respondents No.1 & 2 failed to prove the exact price as well as location of acquired land, thus, were not entitled to exorbitant compensation. He maintains that the market value was to be assessed on the basis of price existing in preceding year of the date of issuance of notification under Section 4 of the Land Acquisition Act, 1894. He adds that as the maximum compensation was awarded, therefore, respondents No.1 & 2 were not entitled to 08% compound interest. Lastly, he submits that since the available record, evidence and applicable law have not been properly appreciated by learned Referee Court, therefore, impugned decree is liable to be set aside. In support of his contentions, he has relied upon Lahore Ring Road Authority and others v. Mian Mumtaz Ahmad and others (2021 CLC 178) and National Highway Authority, Islamabad through Project Director Zafar Mehmood v. Muhammad Afzal Bhatti and another (2024 CLC 1246).

4. Conversely, learned counsel for respondents No.1 & 2 defends the impugned order / decree by contending that learned Legal Advisor for appellant-NHA has failed to pinpoint any illegality or legal infirmity therein, thus, same is liable to be upheld.

5. Arguments heard. Available record perused.
6. This is second round of litigation before this Court. In previous round, this Court vide order dated 07.12.2022, passed in **C.R. No.71874 of 2019**, after setting aside the decree dated 12.09.2018, remanded the matter to the Referee Court for decision afresh after impleading appellant-NHA and recording evidence thereof. Now, through order / decree under challenge in this appeal, the Referee Court has fixed / enhanced the value / price of acquired land, as detailed in commencing paragraph of this judgment. Appellant-NHA is not satisfied by the decision of the Referee Court and is urging to restore the award announced by the Land Acquisition Collector.
7. **The pivotal issues No.1 & 2 are inter-linked and interconnected, hence collective determination thereof would cause no prejudice. The remaining issues No.3 to 7 have not been pressed before this Court.** The precise controversy is whether the value of the acquired land fixed by the Land Acquisition Collector constitutes fair and just compensation or that of the Referee Court within contemplation of provisions of Sections 23 & 24 of the Land Acquisition Act 1894?
8. Respondents / landowners adduced 02 witnesses and documentary evidence as Ex.A-1 to Ex.A-16, and Mark-A to Mark-E. Conversely, appellant-NHA presented 04 witnesses and documentary evidence as Ex.R-1 to Ex.R-5.
9. Admittedly, Notification u/s 4 of the Act of 1894 for acquiring land measuring 116-Kanal situated in village Mauza Kot Kirpa Ram, Tehsil Kamoke, District Gujranwala was issued on 09.06.2016 and the Award (*Exh.A2*) was announced on 16.06.2017, according to which the District Price Assessment Committee approved the following amount of compensation:-

- Rs.16,00,000/- per acre (main road)
- Rs.15,25,000/- per acre (off road)
- Rs.15,20,000/- per acre (kacha road)

10. Record shows that the Award (*Exh.A2*) though mentions that objections were filed by respondents / landowners, however no reasons are forthcoming therefrom which prevailed upon LAC to reject the objections. For example, respondents have raised objection qua compensation / price of land in question by contending that they may be compensated as per the market value of the land in question, which comes to Rs.26,00,000/- per acre for "main road" land, Rs.24,00,000/- per acre for "off road" land and Rs.22,00,000/- per acre for "kacha road" land. Likewise, respondents also raised objection 'E' qua non-observance of formalities under Section 23 of the Act of 1894 for determination of compensation. However, the Land Acquisition Collector announced the award dated 16.06.2017 without addressing the same. It is pertinent to mention here that the award is based upon value assessed by the District Price Assessment Committee (which was approved by Board of Revenue), however, as per information provided by the respondents themselves, which fact is mentioned in the Award (*Exh.A2*) dated 16.06.2017, the field staff had proposed the following amounts of compensation:-

- | | |
|---------------------------|--------------|
| ➤ Rs.22,00,000/- per acre | (main road) |
| ➤ Rs.20,00,000/- per acre | (off road) |
| ➤ Rs.18,00,000/- per acre | (kacha road) |

On being faced with the above, learned counsel for respondents No.1 & 2 admits that the field staff proposed the aforesaid amounts of compensation, however, the same were not considered while fixing the compensation of the acquired land.

11. It is the stance of appellant-NHA that the value assessed by the Referee Court is on higher side. The Referee Court has neither taken into consideration the market value of the land nor the report of field staff. Evidence brought on record by the parties is to be seen in its entirety, stressing less qua the

obligation of the onus to prove, and applying the principle of preponderance of evidence. Appellant-NHA has succeeded to prove that the amount of compensation determined by learned Referee Court is exorbitant. The Referee Court has not properly appreciated the material / evidence brought on record, including the report mentioned supra, facts of the case, applicable law and dictum laid down by the superior Courts while passing the impugned decision.

12. Even otherwise, none of the members of the Committee was produced in evidence to explain the criteria adopted by it while fixing the price. The award as well as impugned decree does not reflect independent assessment by the Land Acquisition Collector and learned Referee Court keeping in view the complexion and character of the acquired land.

13. In view of the above, instant appeal is **partly allowed** in the manner that impugned order / decree dated 04.04.2023 is modified to the extent that respondents No.1 & 2 are held entitled to get the following amount of compensation, keeping in view the report of field staff:-

- Rs.22,00,000/- per acre (link road)
- Rs.20,00,000/- per acre (off road)
- Rs.18,00,000/- per acre (kacha road)
- Rs.30-lac per acre (severed land)

Respondents No.1 & 2 are also held entitled to recover 15% compulsory acquisition charges and compound interest @ 8% from the date of possession of the acquired land to the date of payment of enhanced amount of compensation

**(Muhammad Sajid Mehmood Sethi)
Judge**

APPROVED FOR REPORTING

Judge